



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt resolution complying with the order of the San Joaquin County Superior Court dated February 10, 2006 to vacate approval of the resolutions regarding the Lodi Shopping Center: a) certification of Environmental Impact Report 03-01 (SC#2003042113); b) approval of Use Permit U-02-12; and b) approval of Tentative Parcel Map 03-P-001; and Adopt resolution authorizing the City Manager to execute two agreements to prepare Environmental Impact Report Amendments for the Lodi Shopping Center; one agreement with Pacific Municipal Consultants for \$72,000.00 and one agreement with Bay Area Economics for \$46,075.00.

**MEETING DATE:** May 3, 2006 (Carried over from the meeting of April 19, 2006)

**PREPARED BY:** Randy Hatch, Community Development Director

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**RECOMMENDED ACTION:** That the City Council adopt resolution complying with the order of the San Joaquin County Superior Court dated February 10, 2006 to vacate approval of the resolutions regarding the Lodi Shopping Center: a) certification of Environmental Impact Report 03-01 (SC#2003042113); b) approval of Use Permit U-02-12; and b) approval of Tentative Parcel Map 03-P-001; and

That the City Council adopt resolution authorizing the City Manager to execute two agreements to prepare Environment Impact Report (EIR) Amendments for the Lodi Shopping Center; one agreement with Pacific Municipal Consultants for \$72,000.00 and one agreement with Bay Area Economics for \$46,075.00.

**BACKGROUND INFORMATION:** The Planning Commission and City Council evaluated and certified an Environmental Impact Report (EIR) and approved a Use Permit and Tentative Map for the Lodi Shopping Center. The Center is at the southwest corner of Kettleman Lane and Lower Sacramento Road and is anchored by a Super Wal-Mart and contains other retail tenants. The City's certification of the EIR was challenged in Superior Court and on December 19, 2005, the court found the EIR to be deficient. This action voided City approvals for this project. On February 10, 2006, the Court ordered the City to vacate approval of the following Planning Commission and City Council resolutions approving the project:

- a. Planning Commission Resolution 04-64 certifying the EIR 03-01 adopted on December 8, 2004;
- b. Planning Commission Resolution 04-65 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on December 8, 2004;
- c. City Council Resolution 2005-26 certifying the EIR 03-01 adopted on February 3, 2005; and
- d. City Council Resolution 2005-38 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on February 16, 2005.

The attached Resolution vacates the above actions complying with the Superior Court Order. The Council has directed staff to address the deficiencies found by the Superior Court and amend the original EIR. Staff in close cooperation with our attorney on this case, has been in discussions with our original EIR consultant to prepare an approach to address the deficiencies found by the Court. Attached are the scopes of

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APPROVED:

  
Blair King, City Manager

work by Pacific Municipal Consultants (PMC) and Bay Area Economics (BAE) to complete this work. While PMC continues as the prime consultant on this work, BAE has been added to specifically prepare the economic impacts analysis needed due to the Court's decision. The schedule for this work is included in PMC's proposal and has a target date of January 17, 2007 for the first public hearing (before the Planning Commission).

**FISCAL IMPACT:** There are no fiscal impacts related to the vacation of the approval of the resolutions regarding the Lodi Shopping Center.

The cost to prepare Environment Impact Report (EIR) Amendments for the Lodi Shopping Center is \$72,000.00 for PMC and \$46,075.00 for BEA. All of these costs will be paid for by the developer (Browman Development Company).

**FUNDING AVAILABLE:** N/A

  
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Ruby Paiste, Interim Finance Director

  
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Randy Hatch  
Community Development Director

RH/kjc

Attachments: Resolution to vacate approval  
Resolution to award contract, PMC Proposal, & BAE Proposal

cc: City Attorney

RESOLUTION NO. 2005-26

A RESOLUTION OF THE LODI CITY COUNCIL  
CERTIFYING THE FINAL ENVIRONMENTAL IMPACT  
REPORT (EIR-03-01) RELATING TO THE LODI  
SHOPPING CENTER; STATE CLEARINGHOUSE  
NO. 2003042113

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WHEREAS, an application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane, more particularly described as Assessor's Parcel numbers 058-030-08 and 058-030-02 and a portion of 058-030-09; and

WHEREAS, the Community Development Director made a determination that the project may have impact on the environment and ordered the preparation of an Environmental Impact Report (EIR); and

WHEREAS, the Notice of Preparation (NOP) of the Draft EIR was prepared and distributed to reviewing agencies on April 14, 2003; and

WHEREAS, the Draft Environmental Impact Report (DEIR) was released on August 5, 2004, for circulation; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice, held a study session and public hearing on September 9, 2004. Public comments on the DEIR were taken at that hearing; and

WHEREAS, a Final EIR (FEIR) responding to all public comments on the DEIR submitted prior to the expiration of the comment period was prepared and released to the public and commenting agencies on November 22, 2004; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice, held a public hearing before said Commission on December 8, 2004; and

WHEREAS, the Planning Commission of the City of Lodi has reviewed and certified the Final Environmental Impact Report prepared for the project; and

WHEREAS, that certification has been appealed to the Lodi City Council; and

WHEREAS, the Lodi City Council has reviewed and considered the FEIR prepared for the project; and

WHEREAS, the California Environmental Quality Act (CEQA) requires that, in connection with the approval of a project for which an EIR has been prepared which identifies one or more significant effects, the decision-making agency make certain findings regarding those effects.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED as follows:

1. The foregoing recitals are true and correct.

2. THAT THE CITY COUNCIL finds that full and fair public hearings had been held on the EIR and the City Council having considered all comments received thereon, and determined that said EIR is adequate and complete; and said EIR is hereby incorporated herein by reference.
3. THAT THE CITY COUNCIL determines, in connection with the recommended approval of the proposed Use Permit application for the Lodi Shopping Center, that the FEIR for those actions has been prepared in compliance with CEQA and the state and local environmental guidelines and regulations, that it has independently reviewed and analyzed the information contained therein, including the written comments received during the EIR review period and the oral comments received at the public hearings, and that the FEIR represents the independent judgment of the City of Lodi as Lead Agency for the project.
4. THAT THE CITY COUNCIL finds and recognizes that the FEIR contains additions, clarifications, modifications, and other information in its responses to comments on the DEIR and also incorporates text changes to the EIR based on information obtained from the City since the DEIR was issued. The City Council finds and determines that such changes and additional information are not significant new information as that term is defined under the provisions of CEQA because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the project and they do not reflect any substantial increase in the severity of any environmental impact; no feasible mitigation measures considerably different from those previously analyzed in the DEIR have been proposed that would lessen significant environmental impacts of the project; and no feasible alternatives considerably different from those analyzed in the DEIR have been proposed that would lessen the significant environmental impacts of the project. Accordingly, the City Council finds and determines that recirculation of the FEIR for further public review and comment is not warranted.
5. THAT THE CITY COUNCIL makes the following findings with respect to the significant effects on the environment resulting from the project, as identified in the hereinbefore mentioned FEIR, with the stipulation that (i) all information in these findings is intended as a summary of the full administrative record supporting the FEIR, which full administrative record is available for review through the Director of Community Development at his office in City Hall at 221 West Pine Street, Lodi, 95241, and (ii) any mitigation measures and/or alternatives that were suggested by the commentators on the DEIR and were not adopted as part of the FEIR are hereby expressly rejected for the reasons stated in the responses to comments set forth in the FEIR and elsewhere on the record.

## **I. AGRICULTURAL RESOURCES**

### **A. LOSS OF PRIME AGRICULTURAL LAND**

1. **Impact:** The project would convert approximately 40 acres of prime agricultural land to urban uses. As stated in the City's General Plan, no mitigation is available which would reduce this impact to a less-than-significant level except an outright prohibition of all development on prime agricultural lands. (Significant and Unavoidable Impact)
2. **Mitigation:** No feasible mitigation is available.

3. **Finding:** There are no feasible mitigation measures available that would reduce or avoid the significant loss of agricultural land if the project is implemented. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

As discussed in the DEIR and FEIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land resulting from the project to a less-than-significant level. The project's significant and unavoidable impacts to agricultural resources could be avoided by denying the project or requiring a reduced project, which would prevent the conversion of all or a portion of the site to urban uses. However, this action would not meet the objective of the applicant or the City of Lodi of developing the site for a commercial retail shopping plaza in conformance with the General Plan and zoning designations applicable to the site. In addition, denial of the project would not constitute a "feasible mitigation," and therefore would not be required under Section 15126.4 of the state CEQA Guidelines.

Although project-specific impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, this is primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The implementation of the greenbelt will involve the dedication of setback zones of varying widths between the edge of development and adjacent agricultural land. The City of

Lodi has initiated the creation of the greenbelt through the Westside Facilities Master Plan, which encompasses the largely undeveloped lands adjacent to the northwest portion of the City and extends westward approximately one-half mile west of Lower Sacramento Road. The designated greenbelt is located along the western edge of the Master Plan area and varies in width from 200 feet to approximately 350 feet. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land west of the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself be farmed. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

It has been suggested that the purchase of conservation easements on, or fee title to, agricultural land not on the project site, or the payment of in-lieu fees for such purpose, be required as mitigation for loss of prime agricultural lands. However, conservation easements or other techniques used to protect existing agricultural lands do not create new equivalent agricultural lands which would compensate for the conversion of the subject lands to urban uses. In other words, the easements apply to agricultural land that already physically exists, so "preserving" such land from future conversion, which may or may not occur, does nothing to compensate for the reduction in the overall supply of farmland. Therefore, such easements do not provide true mitigation for the loss of a particular parcel of agricultural land, and as such cannot be considered project-specific mitigation for agricultural conversions due to a development project. This is not to say that the preservation of prime farmland is not a laudable goal, only that CEQA is not the proper mechanism for achieving this goal.

In summary, the City of Lodi makes an extensive effort to avoid the loss of prime farmland through its careful planning of urban areas. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact on the project site to a less-than-significant level and, therefore, the impact remains significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council finds outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

## II. GEOLOGY AND SOILS

### A. SEISMIC HAZARD FROM GROUND SHAKING

1. **Impact:** Strong ground shaking occurring on the site during a major earthquake event could cause severe damage to project buildings and structures. (Significant Impact)
2. **Mitigation:** Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

All portions of the project will be designed and constructed in accordance with the Uniform Building Code guidelines for Seismic Zone 3 to avoid or minimize potential damage from seismic shaking at the site. Conformance with these requirements will be ensured by the Building Division through its routine inspection and permitting functions. These facts support the City's findings.

### B. SEISMICALLY-INDUCED GROUND SETTLEMENTS

1. **Impact:** There is a potential for seismically-induced ground settlements at the site, which could result in damage to project foundations and structures. (Significant Impact)
2. **Mitigation:** If subsequent design-level geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and these buildings will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. Implementation of the recommendations will be ensured by the Public Works Department and Building Division through their routine inspection and permitting functions. These facts support the City's findings.

### C. STORMWATER BASIN BANK INSTABILITY

1. **Impact:** There is a potential for bank instability along the banks of the proposed basin. (Significant Impact)
2. **Mitigation:** Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed along with the design-level improvement plans for the stormwater basin, and the Public Works Director will ensure that the basin is be constructed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's findings.

### D. SOIL CONSOLIDATION AND COLLAPSE

1. **Impact:** Soils present on the site are subject to moisture-induced collapse, which could result in damage to structures. (Significant Impact)
2. **Mitigation:** The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist, as appropriate, in response to localized conditions.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

#### E. EXPANSIVE SOILS

1. **Impact:** There is a low, but not necessarily insignificant, potential for soils expansion at the site, which could result in differential subgrade movements and cracking of foundations. (Significant Impact)
2. **Mitigation:** The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

#### F. SOIL CORROSIVITY

1. **Impact:** The corrosion potential of the on-site soils could result in damage to buried utilities and foundation systems. (Significant Impact)
2. **Mitigation:** The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the City's approval specific buried utilities and foundation systems for buildings, and these features will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

### III. HYDROLOGY AND WATER QUALITY

#### A. EROSION AND SEDIMENTATION DURING CONSTRUCTION

1. **Impact:** During grading and construction, erosion of exposed soils and pollutants from equipment may result in water quality impacts to downstream water bodies. (Significant Impact)
2. **Mitigation:** A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. Typical measures required by the City of Lodi to be implemented during the grading and construction phase include the following:
  - Schedule earthwork to occur primarily during the dry season to prevent most runoff erosion.
  - Stabilize exposed soils by the end of October in any given year by revegetating disturbed areas or applying hydromulch with tetra-foam or other adhesive material.
  - Convey runoff from areas of exposed soils to temporary siltation basins to provide for settling of eroded sediments.
  - Protect drainages and storm drain inlets from sedimentation with berms or filtration barriers, such as filter fabric fences or rock bags or filter screens.
  - Apply water to exposed soils and on-site dirt roads regularly during the dry season to prevent wind erosion.
  - Stabilize stockpiles of topsoil and fill material by watering daily, or by the use of chemical agents.
  - Install gravel construction entrances to reduce tracking of sediment onto adjoining streets.
  - Sweep on-site paved surfaces and surrounding streets regularly with a wet sweeper to collect sediment before it is washed into the storm drains or channels.
  - Store all construction equipment and material in designated areas away from waterways and storm drain inlets. Surround construction staging areas with earthen berms or dikes.
  - Wash and maintain equipment and vehicles in a separate bermed area, with runoff directed to a lined retention basin.
  - Collect construction waste daily and deposit in covered dumpsters.
  - After construction is completed, clean all drainage culverts of accumulated sediment and debris.

The project also is required to comply with NPDES permit requirements, file a Notice of Intent with the Regional Water Quality Control Board and prepare a Storm Water Pollution Prevention Plan.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The above mitigation measures are derived from Best Management Practices (BMPs) recommended by the Regional Water Quality Control Board, and are to be included in the Storm Water Pollution Prevention Plan (SWPPP) to be prepared and implemented by the project proponent in conformance with the state's General Permit for Discharges of Storm Water Associated with Construction Activity. In addition, the project grading plans will conform to the drainage and erosion control standards of the City of Lodi, and will be incorporated into the project Improvement Plans to be approved by the City. Implementation of the erosion control measures will be monitored and enforced by City grading inspectors. These facts support the City's finding.

#### B. WATER QUALITY IMPACTS FROM NON-POINT POLLUTANTS

1. **Impact:** The project would generate urban nonpoint contaminants which may be carried in stormwater runoff from paved surfaces to downstream water bodies. (Significant Impact)
2. **Mitigation:** The project shall include stormwater controls to reduce nonpoint source pollutant loads.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

In January 2003, the City adopted a Stormwater Management Plan (SMP) to implement the provisions of its Phase II NPDES stormwater permit issued by the State Water Resources Control Board. The SMP contains a comprehensive program for the reduction of surface water pollution. The project includes feasible structural BMPs (Best Management Practices) such as vegetated swales and a stormwater basin. Much of the stormwater runoff generated in the northern and southern portions of the site will be conveyed to vegetated swales or bioswales which will provide partial filtering of pollutants and sediments. This partially treated runoff, along with all other parking lot and roof runoff from the project will be conveyed to the 3.65-acre stormwater basin planned adjacent to the southwest corner of the site. The basin would serve as a settling pond where suspended sediments and urban pollutants would settle out prior to discharge of the collected stormwater into the City's storm drain system, thereby reducing potential surface water quality impacts to drainages and water bodies. The pump intake for the basin will be located two feet above the bottom to provide for accumulation of sediments which would be cleaned out on a regular basis.

Non-structural BMPs typically required by the City include the implementation of regular maintenance activities (e.g., damp sweeping of paved areas; inspection and cleaning of storm drain inlets; litter control) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Stormwater catch basins will be required to be stenciled to discourage illegal dumping. In the landscaped areas, chemicals and irrigation water will be required to be applied at rates specified by the project landscape architect to minimize potential for contaminated runoff. Additional BMPs, as identified from a set of model practices developed by the state, may be required as appropriate at the time of Improvement Plan approval. These facts support the City's finding.

#### IV. BIOLOGICAL RESOURCES

##### A. LOSS OF HABITAT FOR SPECIAL-STATUS SPECIES

1. **Impact:** The project would result in the loss of approximately 40 acres of foraging habitat for three protected bird species, and could result in the loss of breeding habitat for two protected bird species. (Significant Impact)
2. **Mitigation:** In accordance with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The in-lieu mitigation fees prescribed under the SJMSCP vary depending on the location of the site, its designation under the SJMSCP, and annual adjustments. The project site is covered by two designations or pay zones under the SJMSCP. The 20.5-acre eastern portion of the shopping center site, is designated "Multi-Purpose Open Space Lands," where in-lieu fees are currently \$862 per acre (2004). The 19.5-acre western portion of the site, which includes the proposed stormwater basin, is designated "Agricultural Habitat and Natural Lands," where in-lieu fees are currently \$1,724 per acre (2004). The compliance with the provisions of the SJMSCP, along with the prescribed preconstruction surveys and any required follow-up measures prescribed at that time, would fully mitigate the small reduction in foraging habitat resulting from development of the project site. These facts support the City's finding.

##### B. IMPACTS TO BURROWING OWLS AND RAPTORS

1. **Impact:** The project could adversely affect any burrowing owls that may occupy the site prior to construction, and could also adversely affect any tree-nesting raptor that may establish nests in trees along the project boundaries prior to construction. (Significant Impact)

2. **Mitigation:** The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:
- If ground disturbance is to occur during the breeding season (February 1 to August 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer.
  - If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While none of these species are currently on the project site, this mitigation measure is included as a contingency to be implemented in the event nesting occurs prior to construction. As specified in the Mitigation Monitoring and Reporting Program attached to this document, the Community Development Director will ensure that the pre-construction surveys are undertaken and that a report of the survey findings is submitted to the City prior to the approval of the project Improvement Plans. If any of the species are found on-site during the surveys, the Public Works Director will ensure that the required setback zones are established. No grading or construction in the vicinity of the nests would be permitted until the project biologist is satisfied that impacts to the species are mitigated or avoided. Relocation of burrowing owls would be allowed to occur only under the direction of the California Department of Fish and Game. These facts support the City's finding.

## V. CULTURAL RESOURCES

### A. IMPACTS TO CULTURAL RESOURCES

1. **Impact:** It is possible that previously undiscovered cultural materials may be buried on the site which could be adversely affected by grading and construction for the project. (Significant Impact)
2. **Mitigation:** Implementation of the following measures will mitigate any potential impacts to cultural resources:
  - In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report.
  - In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report.
  - If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the detailed site reconnaissance by Basin Research Associates indicated that there is no evidence to suggest that cultural resources may be buried on site, the mitigation measure is a standard contingency that is applied in all but the least archaeologically sensitive areas. In the unlikely event artifacts are encountered during grading or excavation, the Public Works Director will enforce any required work stoppages, and the Community Development Director will contact the project archaeologist and will ensure that the archaeologist's recommendations are implemented. These facts support the City's finding.

## VI. TRAFFIC AND CIRCULATION

### A. NEAR TERM PLUS PROJECT UNSIGNALIZED INTERSECTION OPERATIONS

1. **Impact:** The addition of project-generated traffic would exacerbate LOS F operations at the intersection of Lower Sacramento Road / Harney Lane during both a.m. and p.m. peak hour conditions. (Significant Impact)
2. **Mitigation:** The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates calculated that with the above mitigation in place, the level of service at the affected intersection would rise to Level of Service C and thus meet the service standards of the City of Lodi. These facts support the City's finding.

**B. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT SIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD FRONTAGE**

1. **Impact:** During the p.m. peak hour, the eastbound left-turn queue length of 250 feet (average queue) to 375 feet (95<sup>th</sup> Percentile queue) of exiting vehicles would extend west to the internal intersection located south of Pad 10. (Significant Impact)
2. **Mitigation:** Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches at the on-site intersections adjacent to Pads 10 and 11, except the westbound approaches to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

C. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT NORTHERN UNSIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD

1. **Impact:** The addition of a northbound left-turn lane under Access Alternative B would result in Level of Service F conditions at this unsignalized intersection. (This condition does not occur under Access Alternative A where no northbound left-turn movement would occur.) In addition, a non-standard 60-foot back-to-back taper is provided between the northbound left-turn lane (Alternative B) at the northern unsignalized access drive and the southbound left-turn lane at the signalized project entrance. (Significant Impact)
2. **Mitigation:** The following mitigations shall be implemented:
  - a. Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site;
  - b. Construct a 100-foot southbound right-turn lane at the signalized project driveway;
  - c. Extend the southbound left-turn pocket by 100 feet;
  - d. Extend the taper from 60 feet to a City standard 120-foot taper;
  - e. Eliminate the northbound left-turn lane into the northern driveway.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

D. INADEQUATE LEFT-TURN LANE TAPER ON WESTGATE DRIVE

1. **Impact:** On Westgate Drive, a non-City standard 64-foot back-to-back taper is proposed between the northbound left-turn lane at W. Kettleman Lane and the southbound left-turn lane at the northern project driveway. (Significant Impact)
2. **Mitigation:** The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the potential for traffic conflicts arising from inadequate queuing capacity on Westgate Drive would be eliminated. These facts support the City's finding.

#### E. INADEQUATE LEFT-TURN LANE TAPER ON LOWER SACRAMENTO ROAD

1. **Impact:** On Lower Sacramento Road, a non-City standard 70-foot back-to-back taper is proposed between the dual northbound left-turn lanes at W. Kettleman Lane and the southbound left-turn lane at the middle Food 4 Less Driveway. (Significant Impact)
2. **Mitigation:** The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and to extend the taper from 70 feet to a City standard 120-foot taper.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the traffic report by Fehr & Peers indicated that mitigation for this impact would need to be achieved through closure of the southbound left-turn lane at the middle Food 4 Less Driveway, the applicant instead proposes to provide additional roadway right-of-way along the project frontage on Lower Sacramento Road to accommodate side-by-side left-turn lanes (instead of the back-to-back turn pockets as originally proposed). This would allow the mitigation to be implemented as specified while also maintaining the existing southbound left turn. Fehr & Peers Associates has reviewed the proposed roadway configuration and concurs that it would serve as adequate mitigation for the deficiencies noted in the EIR traffic impact report. Therefore, Fehr & Peers Associates concludes that with the above mitigation in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

#### F. PUBLIC TRANSIT SERVICE

1. **Impact:** Development of the project would create a demand for increased public transit service above that which is currently provided or planned. (Significant Impact)
2. **Mitigation:** The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the additional demand for transit service generated by the project would not exceed the capacity of the transit system. These facts support the City's finding.

#### G. PUBLIC TRANSIT STOP

1. **Impact:** Development of the project would create an unmet demand for public transit service which would not be met by the single transit stop proposed for the northwest portion of the project. (Significant Impact)
2. **Mitigation:** Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop and passenger shelter in the eastern portion of the project near Lower Sacramento Road.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the transit service to the site would be adequate to meet ridership demand and would be provided in a manner which is convenient to transit riders, and which avoids traffic and circulation conflicts or congestion. These facts support the City's finding.

#### H. PEDESTRIAN FACILITIES

1. **Impact:** Development of the project would create an unmet demand for pedestrian facilities along West Kettleman Lane, Lower Sacramento Road and Westgate Drive, and internally between the different areas of the project site. (Significant Impact)
2. **Mitigation:** Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the pedestrian facilities provided in the project would be adequate to meet demand and provide for safe pedestrian movement throughout the project. These facts support the City's finding.

### VII. NOISE

#### A. NOISE FROM PROJECT ACTIVITY

1. **Impact:** Noise generated by activity associated with the project would elevate off-site noise levels at existing and future residences in the vicinity. (Significant Impact)
2. **Mitigation:** The following noise mitigations are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:

Rooftop Mechanical Equipment. To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA ( $L_{eq}$ -hour) for any residential yards.

Parking Lot Cleaning. To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

The City of Lodi Building Official will require demonstration of compliance with noise specifications for rooftop mechanical equipment in conjunction with each individual building permit required for the project. The enforcement of the City Noise Regulations with respect to leaf blower noise will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

#### B. NOISE FROM STORMWATER BASIN PUMP

1. **Impact:** Occasional pumping of water from the stormwater basin would generate noise at the planned future residential areas to the south and west of the basin. (Significant Impact)
2. **Mitigation:** The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:
  - 1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion.
  - 2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from an imminent storm).

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

The City of Lodi Public Works Director will require demonstration of compliance with noise specifications for the basin pump in conjunction with the Improvement Plans for the project. The enforcement of the City Noise Regulations with respect to the hours of pump operation will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

#### C. CONSTRUCTION NOISE

1. **Impact:** Noise levels would be temporarily elevated during grading and construction. (Significant Impact)
2. **Mitigation:** Short-term construction noise impacts shall be reduced through implementation of the following measures:

Construction Scheduling. The applicant/contractor shall limit noise-generating construction activities to daytime, weekday, (non-holiday) hours of 7:00 a.m. to 6:00 p.m.

Construction Equipment Mufflers and Maintenance. The applicant/contractor shall properly muffle and maintain all construction equipment powered by internal combustion engines.

Idling Prohibitions. The applicant/contractor shall prohibit unnecessary idling of internal combustion engines.

Equipment Location and Shielding. The applicant/contractor shall locate all stationary noise-generating construction equipment such as air compressors as far as practicable from existing nearby residences. Acoustically shield such equipment as required to achieve continuous noise levels of 55 dBA or lower at the property line.

Quiet Equipment Selection. The applicant/contractor shall select quiet construction equipment, particularly air compressors, whenever possible. Fit motorized equipment with proper mufflers in good working order.

Notification. The applicant/contractor shall notify neighbors located adjacent to, and across the major roadways from, the project site of the construction schedule in writing.

Noise Disturbance Coordinator. The applicant/contractor shall designate a "noise disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would notify the City, determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and would institute reasonable measures

to correct the problem. Applicant/contractor shall conspicuously post a telephone number for the disturbance coordinator at the construction site, and include it in the notice sent to neighboring property owners regarding construction schedule. All complaints and remedial actions shall be reported to the City of Lodi by the noise disturbance coordinator.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

Each phase of grading and construction will be required to implement the above noise control measures and other measures which may be required by the City of Lodi. The construction noise control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. Although there are noise sensitive uses such as residential neighborhoods in the vicinity of the project site, most existing dwellings would be at least 200 feet away from the nearest grading and construction activity. This distance separation from the noise sources and the effective implementation of the above mitigation measures by the contractors, as monitored and enforced by City Public Works Department and Building Division, would reduce the noise levels from this temporary source to acceptable levels. These facts support the City's finding.

## VIII. AIR QUALITY

### A. CONSTRUCTION EMISSIONS

1. **Impact:** Construction and grading for the project would generate dust and exhaust emissions that could adversely affect local and regional air quality. (Significant Impact)
2. **Mitigation:** Dust control measures, in addition to those described in the FEIR, shall be implemented to reduce PM<sub>10</sub> emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Air Pollution Control District (Air District).
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

Each phase of grading and construction will be required to implement the dust control measures specified in the San Joaquin Valley Air Pollution Control District's Regulation VIII, as well as additional practices itemized in the FEIR and as otherwise required by the City of Lodi. The dust control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to

commencement of grading. The Public Works Department will monitor and enforce the dust suppression requirements as part of their site inspection duties. Violations of the requirements of Regulation VIII are also subject to enforcement action by the Air District. Violations are indicated by the generation of visible dust clouds and/or generation of complaints. These facts support the City's finding.

**B. REGIONAL AIR QUALITY**

1. **Impact:** Emissions from project-generated traffic would result in air pollutant emissions affecting the entire air basin. (Significant Impact)
2. **Mitigation:** Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions, including those measures described in the FEIR; however, these measures would not reduce the impact to a less-than-significant level.
3. **Finding:** While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. Therefore, the impact is significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by Donald Ballanti concluded that the project would exceed the significance thresholds established for these pollutants. In addition, large commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts to less-than-significant levels. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

### C. RESTAURANT ODORS

1. **Impact:** The restaurant uses in the project could release cooking exhausts which could result in noticeable odors beyond project boundaries. (Significant Impact)
2. **Mitigation:** All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the nature and location of restaurants within the project has not been determined, this mitigation requirement will ensure that cooking odors from any on-site restaurants will not result in annoyance or nuisance conditions. The Building Official will ensure that the required equipment is included on the plans, and will ensure that the equipment is properly installed and functioning. These facts support the City's finding.

## IX. CUMULATIVE IMPACTS

### A. AGRICULTURAL LAND CONVERSION

1. **Impact:** The conversion of prime agricultural land at the project site, combined with the agricultural conversion associated with other foreseeable projects in the area, would result in a cumulatively substantial impact to agricultural resources. (Significant Impact)
2. **Mitigation:** No feasible mitigation is available.
3. **Finding:** As with the project-specific agricultural impacts, there is no feasible mitigation measure available that would reduce or avoid the significant cumulative loss of agricultural land resulting from development of the proposed project and other foreseeable projects in the area. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

As discussed in the Draft EIR and Final EIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land to a less-than-significant level. Although impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime

agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, this is primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The implementation of the greenbelt will involve the dedication of setback zones of varying widths between the edge of development and adjacent agricultural land. The City of Lodi has initiated the creation of the greenbelt through the Westside Facilities Master Plan, which encompasses the largely undeveloped lands adjacent to the northwest portion of the City and extends westward approximately one-half mile west of Lower Sacramento Road. The designated greenbelt is located along the western edge of the Master Plan area and varies in width from 200 feet to approximately 350 feet. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land west of the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself be farmed. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

It has been suggested that the purchase of conservation easements on, or fee title to, agricultural land, or the payment of in-lieu fees for such purpose, be required as mitigation for loss of prime agricultural lands. However, conservation easements or other techniques used to protect existing agricultural lands do not create new equivalent agricultural lands which would compensate for the conversion of the subject lands to urban uses. In other words, the easements apply to agricultural land that already physically exists, so "preserving" such land from future conversion, which may or may not occur, does nothing to compensate for the reduction in the overall supply of farmland. Therefore, such easements do not provide true mitigation for the loss of a particular parcel of agricultural land, and as such cannot be considered as mitigation for agricultural conversions due to development projects. This is not to say that the preservation of prime farmland is not a laudable goal, only that CEQA is not the proper mechanism for achieving this goal.

In summary, the City of Lodi makes an extensive effort to avoid the loss of prime farmland through its careful planning of urban areas within its boundaries. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact to a less-than-significant level on a project-specific or cumulative basis and, therefore, the impact remains cumulatively significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with the City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

#### B. REGIONAL AIR QUALITY IMPACTS

1. **Impact:** Emissions from project-generated traffic, combined with the emissions of other foreseeable projects in the area, would result in air pollutant emissions affecting the entire air basin. (Significant Cumulative Impact)
2. **Mitigation:** For the proposed project, design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions. However, these measures would not reduce the impact to a less-than-significant level, either on a project-specific basis or on a cumulative basis.
3. **Finding:** While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. This impact would be exacerbated by emissions from other foreseeable projects in the area. Therefore, the cumulative impact is significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by Donald Ballanti concluded that the project would far exceed the significance thresholds established for these pollutants. In addition, large commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing

automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts resulting from the proposed project to less-than-significant levels. Other foreseeable projects in the area may be more suitable for the implementation of TDM measures to reduce emissions on an individual project basis; however, the cumulative impact would not be reduced to a less-than-significant level. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's recently adopted Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

## **FINDINGS CONCERNING ALTERNATIVES**

Under CEQA, an EIR must describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. Even if a project alternative will avoid or substantially lessen any of the significant environmental effects of the project, the decision-makers may reject the alternative if they determine that specific considerations make the alternative infeasible. The findings with respect to the alternatives identified in the Final EIR are described below.

### **I. NO PROJECT ALTERNATIVE**

- A. **Description of the Alternative:** The No Project alternative consists of not building on the project site and possibly resuming agricultural cultivation of the property for oats, hay, or row crops.
- B. **Comparison to the Project:** The No Project alternative would avoid some of the significant unmitigable effects of the proposed project, such as conversion of prime farmland and regional air quality impacts. For all other areas of concern, the differences in impacts between the No Project alternative and the proposed project would not be significant because the project impacts could be reduced to less-than-significant levels through feasible mitigation measures. On balance, the No Project alternative would be superior to the proposed project because it would not result in the significant unavoidable impacts to agricultural resources and air quality which are associated with the proposed project, and because it would result in little or no impact in the other impact categories.

- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The substantial revenues for the City of Lodi General Fund through increased sales tax and property tax that would be generated by the project would be lost, as would the employment opportunities for City residents created by the project. The vital municipal infrastructure improvements that would be constructed by the project would be foregone, as would the impact fees paid by the project which would help fund vital public services throughout the City of Lodi. Unlike the proposed project, the No Project alternative would not implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The No Project alternative also would not implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City.

## II. REDUCED PROJECT SIZE ALTERNATIVE

- A. **Description of the Alternative:** This alternative would consist of a substantially reduced project site of approximately 24 acres, including about 22 gross acres for retail development and 2 acres for the stormwater basin. This would represent approximately 60 percent of the proposed project size of 40 acres. This alternative would include the Wal-Mart Supercenter, as proposed, but would not include any of the ancillary retail pads proposed in the project.
- B. **Comparison to the Project:** The Reduced Project Size alternative would result in a slight reduction in the levels of impact associated with the proposed project in several topic areas, although these impacts would be mitigated to less-than-significant levels under the proposed project. For the two significant and unavoidable impacts associated with the proposed project – impacts to agricultural resources and regional air quality – the Reduced Project Size alternative would lessen these impacts but would not avoid them or reduce them to less-than-significant levels. Thus, although the Reduced Project Size alternative would be slightly superior to the proposed project, it would not achieve the CEQA objective of avoiding the significant impacts associated with the project.

- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The revenues for the City of Lodi General Fund that would be generated by the project would be substantially reduced, as would the number of employment opportunities for City residents created by the project. This alternative would not complete the vital municipal infrastructure improvements that would be constructed by the project, and would substantially reduce the impact fees paid by the project to help fund vital public services throughout the City of Lodi. This alternative would lessen the City's ability to implement adopted City plans and policies for accomplishing long-term development plans for commercial use at the project site. This alternative would also compromise the City's ability to implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City.

## III. ALTERNATIVE PROJECT LOCATION

- A. **Description of the Alternative:** An alternative project site was identified in the unincorporated area of San Joaquin County known as Flag City, consisting of

*CEQA Findings*

*Lodi Shopping Center EIR*

approximately 36 gross acres in the northeast quadrant of Highway 12 and Thornton Road, just east of I-5. To allow direct comparison, it was assumed that a 36-acre portion of the lands at this location would be developed with roughly the same land use configuration and intensity as the proposed project.

- B. Comparison to the Project:** The impacts associated with development of the Flag City site would be somewhat greater than for the proposed project site. Although the impacts for many categories would be similar for both project locations, development of the Flag City site would result in negative effects in terms of land use policy, and the resulting potential for growth inducement, which would not occur with the proposed project site. Traffic impacts would be greater for the Flag City site, as would impacts to utilities and public services, although these impacts would be less than significant or could be fully mitigated. More importantly, the alternative project site would result in the same significant and unavoidable impacts to agricultural resources and air quality as are associated with the proposed project. Therefore, the alternative site would not lessen or avoid the significant and unavoidable impacts of the project.

- C. Finding:** This alternative is hereby rejected for the reasons set forth below.

The alternative project site is not environmentally superior to the proposed project site. In addition, due to its location outside the City of Lodi, the alternative site would not provide the benefits associated with the proposed project including increased municipal revenues and impact fees for providing services, creation of employment opportunities for City residents, construction of vital municipal infrastructure improvements, and the opportunity to implement City goals and policies with respect to the commercial development of the project site (consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries), and the chance to provide a high quality development at the western gateway to the City.

## ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Of the three project alternatives considered, only the No Project alternative would avoid or substantially lessen the significant impacts of the project. The significant and unavoidable impacts to agricultural resources and air quality associated with the proposed project would both be avoided by the No Project alternative. Since all other project impacts are either less than significant or can be reduced to less-than-significant levels through the implementation of feasible mitigation measures, the No Project alternative would not offer substantial reductions in impact levels under the other impact categories. Therefore, the No Project alternative would represent the environmentally superior alternative to the proposed project. The No Project alternative was not selected because it would not meet the applicant's objective of developing the site for shopping center uses; nor would it meet the City's goals of enhancing its revenue base, creating jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the site with commercial retail uses.

The CEQA Guidelines, at Section 15126.6(e)(2), require that if the environmentally superior alternative is the No Project alternative, the EIR shall also identify an environmentally superior alternative from among the other alternatives. The Reduced Project Size alternative was found to result in the same significant and unavoidable impacts to agricultural resources and air quality as the proposed project. However, it would result in slightly lower levels of impact in several impact categories, although these impacts would all be reduced to less-than-significant levels in conjunction with the proposed project. Therefore, the Reduced Project Size alternative represents the environmentally superior alternative. The Reduced Project Size alternative was not

*CEQA Findings*

*Lodi Shopping Center EIR*

selected by the applicant because it would not fulfill the project objective of a 30-acre minimum project size needed for project feasibility. It also would be substantially less effective than the proposed project in fulfilling the City's objective of enhancing its fiscal resources through increased sales tax and property tax revenues, or in meeting the objectives of creating new jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the proposed project site with commercial retail uses.

In conclusion, there are no feasible environmentally superior alternatives to the project (other than the No Project alternative) which would avoid or reduce the significant impacts associated with the proposed project to less-than-significant levels.

#### **MITIGATION MONITORING PROGRAM**

Attached to this resolution and incorporated and adopted as part thereof, is the Mitigation Monitoring and Reporting Program for the Lodi Shopping Center. The Program identifies the mitigation measures to be implemented in conjunction with the project, and designates responsibility for the implementation and monitoring of the mitigation measures, as well as the required timing of their implementation.

#### **STATEMENT OF OVERRIDING CONSIDERATIONS**

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091-15093, the City Council of the City of Lodi hereby adopts and makes the following Statement of Overriding Considerations regarding the remaining significant and unavoidable impacts of the project and the anticipated economic, social and other benefits of the project.

##### **A. Significant Unavoidable Impacts**

With respect to the foregoing findings and in recognition of those facts which are included in the record, the City Council has determined that the project would result in significant unavoidable impacts to prime agricultural land and regional air quality. These impacts cannot be mitigated to a less-than-significant level by feasible changes or alterations to the project.

##### **B. Overriding Considerations**

The City Council specifically adopts and makes this Statement of Overriding Considerations that this project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of environmental, economic, social or other considerations set forth herein because the benefits of the project outweigh the significant and adverse effects of the project.

The City Council has considered the EIR, the public record of proceedings on the proposed project and other written materials presented to the City, as well as oral and written testimony received, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:

1. Project Will Generate City Sales Taxes. The sales generated by the Lodi Shopping Center will generate additional sales tax and property tax revenues for the City, which would otherwise not be generated by the undeveloped site. These revenues go to the City's General Fund which is the primary funding source for the construction, operation and maintenance of a number of essential City services, programs and facilities including fire and police services, recreation programs, transit operations, library services, public infrastructure such as water and sanitary sewer service, and administrative functions, among other things.
2. Project Creates Employment Opportunities for City Residents. The Lodi Shopping Center project will generate both temporary construction jobs as well as hundreds of permanent full-time and part-time jobs. The vast majority of the permanent jobs will not require special skills and therefore could be filled by existing local residents. Thus, with the exception of a very few management positions which will likely be filled by transferees from other localities, no specially-skilled workers would need to be "imported" from outside the City. Consequently, it is expected that City residents would benefit from added employment opportunities offered by the Lodi Shopping Center.
3. Project Will Implement Vital Municipal Infrastructure Improvements. Through the development of the project, a number of public infrastructure projects will be constructed on the project site and the project vicinity. As described on page 15 of the Draft EIR, the project will construct planned roadway improvements along the portions of Lower Sacramento Road and State Route 12/Kettleman Lane that front the project site, and as well as Westgate Drive to its full design width along the western project boundary. This is an economic benefit of the project in that these improvements would otherwise not be made without approval and implementation of the project. The project will also be conditioned to pay impact fees to the City in accordance with City's adopted Development Impact Fee program, which can be applied toward municipal improvements such as water, sewer, storm drainage, and streets, as well as police, fire, parks and recreation, and general City government. These are vital municipal improvements necessary to the function of the City and the quality of life for City residents, providing another economic benefit as well as social benefit of the project.
4. Project Implements Adopted City Plans. The project is situated within Lodi City limits and has been planned for commercial development in the current City of Lodi General Plan since its adoption in 1991. Therefore, the project implements adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. In addition, the project completes the development of the "Four Corners" area by providing a large-scale retail center on the last remaining undeveloped site at the Lower Sacramento Road/Kettleman Lane intersection consistent with the goals and policies of the City's General Plan and Zoning Ordinance.
5. Creates High Quality Design at Western Gateway to the City. The Lodi Shopping Center has been designed in conformance with the City's recently adopted Design Standards for Large Retail Establishments which will ensure a consistent high quality of design throughout the project site. This is a particularly important consideration given the project's visually prominent location at the western gateway to the City, and will effectively implement the General Plan goal and policies which call for the establishment of identifiable, visually appealing, and memorable entrances along the principal roads into the City.

The City Council has weighed the above economic and social benefits of the proposed project against its unavoidable environmental risks and adverse environmental effects identified in the EIR and has determined that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

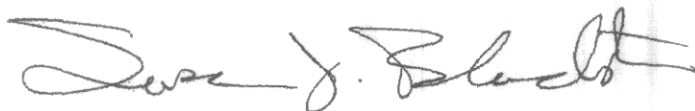
6. The Final Environmental Impact Report for the Lodi Shopping Center project was certified by the Lodi Planning Commission pursuant to the California Environmental Quality Act by adoption of their Resolution No. 04-64 on December 8, 2004.. All feasible mitigation measures for the project identified in the Environmental Impact Report and accompanying studies are hereby incorporated into this resolution.

Dated: February 3, 2005

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I hereby certify that Resolution No. 2005-26 was passed and adopted by the City Council of the City of Lodi in a special meeting held February 3, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, and Mounce  
NOES: COUNCIL MEMBERS – Hitchcock  
ABSENT: COUNCIL MEMBERS – Mayor Beckman  
ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk

RESOLUTION NO. 2005-38

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING USE PERMIT FILE NO. U-02-12, TO ALLOW THE CONSTRUCTION OF A COMMERCIAL SHOPPING CENTER IN THE C-S ZONE AND SALE OF ALCOHOLIC BEVERAGES AT THE WAL-MART SUPERCENTER, AND TENTATIVE PARCEL MAP 03-P-001, TO CREATE 12 PARCELS FOR THE PROJECT RELATING TO THE LODI SHOPPING CENTER

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WHEREAS, an application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel Numbers 058-030-08 and 058-030-02 and portion of 058-030-09; and

WHEREAS, the application's are for the following approvals: Use Permits for the construction of commercial structures as required by the C-S Commercial Shopping District and for the sale of alcoholic beverages, as well as a Parcel map to create 12 parcels for the project; and

WHEREAS, the Planning Commission of the City of Lodi has reviewed and considered the Final Environmental Impact Report prepared on the Lodi Shopping Center; and

WHEREAS, the Planning Commission of the City of Lodi, after more than ten (10) days published notice, held a public hearing before said Commission on December 8, 2004; and

WHEREAS, the Lodi City Council has reviewed and considered the approval of Use Permit File No. U-02-12, to allow the construction of a commercial shopping center in the C-S Zone and sale of alcoholic beverages at the Wal-Mart Supercenter, and tentative parcel map 03-P-001, to create 12 parcels for the project relating to the Lodi Shopping Center; and

WHEREAS, the project is consistent with all elements of the General Plan. In particular, the following Goals and Policies:

- A. Land Use and Growth Management Element, Goal E, "To provide adequate land and support for the development of commercial uses providing goods and services to Lodi residents and Lodi's market share."
- B. Land Use and Growth Management Element, Goal E, Policy 7, "In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality."
- C. Land Use and Growth Management Element, Goal E, Policy 3, "The City shall encourage new large-scale commercial centers to be located along major arterials and at the intersections of major arterials and freeways."
- D. Housing Element, Goal C, "To ensure the provision of adequate public facilities and services to support existing and future residential development".
- E. Circulation Element, Goal G, "To encourage a reduction in regional vehicle miles traveled."

- F. Circulation Element, Goal A, Policy 1, "The City shall strive to maintain Level of Service C on local streets and intersections. The acceptable level of service goal will be consistent with financial resources available and the limits of technical feasibility."
- G. Noise Element, Goal A, "To ensure that City residents are protected from excessive noise."
- H. Conservation Element, Goal C, Policy 1, "The City shall ensure, in approving urban development near existing agricultural lands, that such development will not constrain agricultural practices or adversely affect the economic viability of adjacent agricultural practices."
- I. Health and Safety Element, Goals A, B, C, and D, "To prevent loss of lives, injury and property damage due to flooding." "To prevent loss of lives, injury, and property damage due to the collapse of buildings and critical facilities and to prevent disruption of essential services in the event of an earthquake." "To prevent loss of lives, injury, and property damage due to urban fires." "To prevent crime and promote the personal security of Lodi residents."
- J. Urban Design and Cultural resources, Goal C, "To maintain and enhance the aesthetic quality of major streets and public/civic areas."

WHEREAS, the design and improvement of the site is consistent with all applicable standards adopted by the City. Specifically, the project has met the requirements of the Lodi Zoning Ordinance with particular emphasis on the standards for large retail establishments; and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards; and

WHEREAS, these findings, as well as the findings made within Resolution No. P.C. 04-64 certifying Final Environmental Impact Report EIR-03-01, are supported by substantial evidence in the record of this proceeding and before this body.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED as follows:

- 1. The foregoing recitals are true and correct.
- 2. Said Tentative Parcel Map complies with the requirements of the City Subdivision Ordinance, and the Subdivision Map Act.
- 3. Said Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.
- 4. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions.
  - A. The approval of the Use Permit expires within 24 months from the date of this Resolution. Should any litigation be filed regarding this project, the time limit shown shall be tolled during the pendency of the litigation. Parcel Map

conforming to this conditionally approved Tentative Parcel Map shall be filed with the City Council in time so that the Council may approve said map before its expiration, unless prior to that date, the Planning Commission or City Council subsequently grants a time extension for the filing of the final map, as provided for in the City's Subdivision Ordinance and the Subdivision Map Act. It is the developer's responsibility to track the expiration date. Failure to request an extension will result in a refilling of the Tentative Parcel Map and new review processing of the map.

- B. Prior to submittal of any further plan check or within 90 days of the approval of this project, whichever occurs first, the applicant shall sign a notarized affidavit stating that "I (we), \_\_\_\_\_, the owner(s) or the owner's representative have read, understand, and agree to implement all mitigation measures identified in the Final Environmental Impact Report for the Lodi Shopping Center and the conditions of the Planning Commission approving U-02-12 and 03-P-001." Immediately following this statement will appear a signature block for the owner or the owner's representative, which shall be signed. Signature blocks for the Community Development Director and City Engineer shall also appear on this page. The affidavit shall be approved by the City prior to any improvement plan or final map submittal.
- C. Prior to issuance of any building permit on the site, each building shall be reviewed by the Site Plan and Architectural Review Committee for consistency with this resolution as well as all applicable standards of the City.
- D. All applications for Site Plan and Architectural Review Committee consideration shall comply with the following conditions:
  - 1. All buildings shall meet the required setbacks for the C-S zoning district. All buildings shall implement building elements and materials illustrated on the submitted elevation or otherwise consistent with the architectural theme presented on the submitted elevation of the major tenant building.
  - 2. Submit a construction landscape plan consistent with the submitted conceptual landscape plan. The applicant shall also insure that the overall ratio of trees, including perimeter landscaping is equal to one tree for every four parking spaces. Further, said plan shall demonstrate that the City's requirement for parking lot shading is met.
  - 3. The applicant shall select and note on all plans common tree species for the parking lot and perimeter areas from the list of large trees as identified in the Local Government Commission's "Tree Guidelines for the San Joaquin Valley".
  - 4. All drive-through eating facilities shall have a "double service window" configuration and pullout lane to minimize auto emissions.
  - 5. Cart corrals shall to be provided in the parking lot adjacent to Wal-Mart and distributed evenly throughout the lots rather than concentrated along the main drive aisle. In addition, a cart corral

shall be provided as close as possible to the two bus stop/shelters provided on-site. Further, cart corrals shall be permanent with a design that is consistent with the theme of the center. Portable metal corrals shall be prohibited.

6. Trash enclosures shall be designed to accommodate separate facilities for trash and recyclable materials. Trash enclosures having connections to the wastewater system shall install a sand/grease trap conforming to Standard Plan 205 and shall be covered.
  7. Hardscape items, including tables, benches/seats, trashcans, bike racks, drinking fountains, etc. shall be uniform for all stores throughout the shopping center.
  8. All signage shall be in compliance with a detailed Sign Program that shall be submitted to SPARC for review and approval with the first building plan review.
  9. Said program shall require all signs to be individual channel letter at the standards provided by the zoning ordinance.
  10. Any bollards installed in a storefront location shall be decorative in style and consistent with the theme of the shopping center. Plain concrete bollards, or concrete filled steel pipe bollards shall not be permitted.
- E. All landscaped area shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. Unhealthy, dead, or damaged plant materials shall be removed and replaced within 30 days following written notice from the Community Development Director.
- F. The following items are conditions of approval for the vesting tentative parcel map, all to be accomplished prior to, or concurrent with, final parcel map filing unless noted otherwise:
1. Dedication of street right-of-way as shown on the parcel map with the following changes/additions:
    - a) Street right-of-way dedications on Westgate Drive shall be in conformance with the traffic study for the project and City of Lodi requirements and shall be consistent with the West Side Facility Master Plan. The north and south legs of Westgate Drive must be in alignment through the intersection at Kettleman Lane. Construction of full width street improvements to and including the west curb and gutter is required. Acquisition of additional right-of-way from adjacent parcels to the west is the responsibility of the developer and must be supplied prior to recordation of any final parcel map. In the event the developer is unable to acquire the additional right-of-way from adjacent property owners, the project site plan and proposed parcel boundaries shall be modified to provide the required street right-of-way dedications within the boundaries of the map.

- b) Right-of-way dedications on Lower Sacramento Road and Kettleman Lane shall be in conformance with the project traffic study and City of Lodi street geometric requirements for this project and to the approval of the Public Works Department and Caltrans. The right-of-way width and lane geometry for Kettleman Lane need to be compatible with the improvement plans prepared by Mark Thomas & Company for the Vintner's Square Shopping Center on the north side of Kettleman Lane. Right-of-way dedications on Kettleman Lane shall be made to Caltrans in conformance with their requirements. Separate parcels shall be created for Caltrans dedications. It should be anticipated that Caltrans will require street widening improvements west of the project boundary. Acquisition of any right-of-way necessary to meet Caltrans requirements shall be the responsibility of the developer.
  - c) Lower Sacramento Road is an established STAA route and turning movements to and from the roadway into private driveways and intersecting streets are required to demonstrate that accommodation has been made for the truck turning movement in conformance with Public Works requirements. At the signalized intersection and the driveway immediately north, the right-of-way dedications and driveway design shall provide for 60-foot radius truck turning movements as set forth in the Caltrans Highway Design Manual.
  - d) The right-of-way dedication and driveway design at the south project driveway on Lower Sacramento Road shall accommodate and be in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template.
  - e) Right-of-way dedications at all proposed project driveway locations shall be sufficient to accommodate the handicap ramps and public sidewalks at the crosswalk locations. In addition, the right-of-way dedication at the proposed traffic signal location on Lower Sacramento Road shall be sufficient to allow installation of the traffic signal improvements within the public right-of-way.
2. Dedication of public utility easements as required by the various utility companies and the City of Lodi, including, but not limited to, the following:
- a) An existing public utility easement (PUE) lies within the proposed Westgate Drive right-of-way. The existing PUE shall be abandoned and an equal replacement PUE conforming to City of Lodi requirements shall be provided immediately adjacent to and west of the west right-of-way line of Westgate Drive. Acquisition of the replacement PUE from adjacent parcels to the west is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map. In the event the developer is unable to acquire the replacement PUE from adjacent property owners, the project site plan and proposed parcel boundaries shall be modified to provide the required PUE dedications within the boundaries of the map.

- b) A PUE along the southerly property line sufficient to accommodate the installation of electric utility overhead transmission lines and underground conduit bank outside proposed landscape areas, and the extension of water, wastewater and industrial waste transmission lines between Lower Sacramento Road and Westgate Drive. We anticipate the required PUE along the south project boundary will be on the order of 65 to 75 feet. It may be possible to reduce the width of the PUE by realigning some of the pipes through the shopping center site. The actual alignment and width will be to the approval of the Public Works Department and City of Lodi Electric Utility.
  - c) A PUE at the proposed signalized project driveway to accommodate the installation of traffic signal loops.
  - d) A PUE at the existing southerly Sunwest Plaza (Food 4 Less) driveway to accommodate the installation of traffic signal loops. Acquisition of the PUE is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map.
3. In order to assist the City in providing an adequate water supply, the property owner is required to enter into an agreement with the City that the City of Lodi be appointed as its agent for the exercise of any and all overlying water rights appurtenant to the proposed Lodi Shopping Center, and that the City may charge fees for the delivery of such water in accordance with City rate policies. The agreement establishes conditions and covenants running with the land for all lots in the parcel map and provides deed provisions to be included in each conveyance.
- Submit final map per City requirements including the following:
- a) Preliminary title report.
  - b) Standard note regarding requirements to be met at subsequent date.
4. Payment of the following:
- a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
- G. The following items are conditions of approval for the vesting tentative parcel map and use permit that will be deferred until the time of development:
- 1. Engineering and preparation of improvement plans and estimate per City Public Improvement Design Standards for all public improvements for all parcels at the time of development of the first parcel. Plans to include:
    - a) Detailed utility master plans and design calculations for all phases of the development, including the proposed temporary storm drainage detention basin. Detailed utility master plans have not been developed for the area between Kettleman Lane on the north, Harney Lane on the south, Lower Sacramento Road on the east and the current General Plan boundary on the west. The project site is at the upstream boundary of the storm drain and wastewater utilities for this area. The developer's engineer shall provide

detailed drainage master plans, including engineering calculations, for the entire area as well as all phases of the proposed project. City staff will assist in this process to the extent practicable. Should City staff be unable to meet developer's schedule, developer shall have the option to pay the City to contract for supplemental outside consultant services to expedite review and approval of the master planning work.

- b) Current soils report. If the soils report was not issued within the past three (3) years, provide an updated soils report from a licensed geotechnical engineer.
- c) Grading, drainage and erosion control plan.
- d) Copy of Notice of Intent for NPDES permit, including storm water pollution prevention plan (SWPPP).
- e) All utilities, including street lights and electrical, gas, telephone and cable television facilities.
- f) Landscaping and irrigation plans for street medians and parkway areas in the public right-of-way.
- g) Undergrounding of existing overhead utilities, excluding transmission lines.
- h) Installation of the proposed traffic signal at the main project driveway on Lower Sacramento Road. The traffic signal shall be designed to operate as an eight phase signal.
- i) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to widen the driveway to the south as shown on the site plan and construct a driveway return comparable to the existing driveway return.
- j) Installation/modification of the traffic signal at the Kettleman Lane/Westgate Drive intersection as required by the project.
- k) Traffic striping for Lower Sacramento Road, Westgate Drive and Kettleman Lane.

A complete plan check submittal package including all the items listed above plus engineering plan check fees is required to initiate the Public Works Department plan review process for the engineered improvement plans.

- 2. There is limited wastewater capacity in the wastewater main in Lower Sacramento Road. The area of the shopping center site containing the proposed Wal-Mart store lies outside the service area for the Lower Sacramento Road wastewater line. Developer shall perform a capacity analysis using flow monitoring protocols to assess the viability of utilizing the Lower Sacramento Road wastewater line on an interim basis. Wastewater facilities outside the Lower Sacramento Road service area shall be designed to allow future connection to the wastewater main in Westgate Drive. If the capacity analysis indicates that interim capacity in the Lower Sacramento Road wastewater line is not available, master plan wastewater facilities shall be constructed to serve the project.

3. Installation of all public utilities and street improvements in conformance including, but not limited to, the following:
- a) Installation of all curb, gutter, sidewalk, traffic signal and appurtenant facilities, traffic control or other regulatory/street signs, street lights, medians and landscaping and irrigation systems. All improvements on Kettleman Lane shall be in conformance with City of Lodi and Caltrans requirements and require Caltrans approval. Additional right-of-way acquisition outside the limits of the map may be required and shall be the responsibility of the developer.
  - b) The extension/installation of all public utilities, including, but not limited to, the extension of master plan water, wastewater, storm drainage and reclaimed water mains to the south end of Westgate Drive and the extension of water, wastewater and industrial waste transmission lines through the shopping center site from Lower Sacramento Road to Westgate Drive. The developer's engineer shall work with Public Works Department staff to resolve public utility design issues.
  - c) Relocation of existing utilities, as necessary, and undergrounding of existing overhead lines, excluding electric (64 kv) transmission lines.
  - d) Storm drainage design and construction shall be in compliance with applicable terms and conditions of the City's Stormwater Management Plan (SMP) approved by the City Council on March 5, 2003, and shall employ the Best Management Practices (BMPs) identified in the SMP. If bioswales are to be used, they need to be clearly delineated and detailed on the site plan and the landscape plan. Most trees are not compatible with bioswales.
  - e) The lane configuration for Westgate Drive shall be consistent with the West Side Facility Master Plan. The street improvements will include a landscaped median and parkways. Improvements on Westgate Drive shall extend to and include the installation of the westerly curb and gutter. Acquisition of street, public utility and construction easements from the adjoining property may be necessary to allow this construction and shall be the responsibility of the developer. Street improvements for Westgate Drive shall be constructed from the signalized intersection on Kettleman Lane to the south boundary of the parcel map.
  - f) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns. Acquisition of additional right-of-way and construction easements from the adjacent property to the south may be necessary to accomplish this work and shall be the responsibility of the developer.

All public improvements to be installed under the terms of an improvement agreement to be approved by the City Council prior to development of the first parcel.

4. The proposed temporary storm drainage basin shall be designed in conformance with City of Lodi Design Standards §3.700 and must be approved by the City Council. Acquisition of property to accommodate the construction of the temporary drainage basin is the responsibility of the developer. All drainage improvements shall be designed for future connection to permanent public drainage facilities when they become available. If a temporary outlet from the drainage basin to the public storm drain system in Lower Sacramento Road is desired, developer's engineer shall contact the Public Works Department to coordinate this work with the City's Lower Sacramento Road Widening Project.
5. A Caltrans encroachment permit is required for all work in the Kettleman Lane right-of-way, including landscape and irrigation improvements in the median and parkway along the site frontage. Based on past experience, Caltrans will only allow landscape and irrigation improvements within their right-of-way if the City enters into an agreement with Caltrans covering maintenance responsibilities for those improvements. The City is willing to execute such an agreement, however, the developer will be required to execute a similar landscape maintenance agreement with the City assuming the city's responsibilities for the landscape and irrigation improvements in the parkways. The City will accept maintenance responsibilities for all landscape and irrigation improvements in the median.
6. Design and installation of public improvements to be in accordance with City master plans and the detailed utility master plans as previously referenced above.

Note that the developer may be eligible for reimbursement from others for the cost of certain improvements. It is the developer's responsibility to request reimbursement and submit the appropriate information per the Lodi Municipal Code (LMC) §16.40.

7. Parcels 1 through 12 are zoned C-S to allow development of a commercial shopping center. The following improvements shall be constructed with the development of the first parcel zoned for commercial development:
  - a) Installation of all street improvements on Lower Sacramento Road, Kettleman Lane and Westgate Drive. Street improvements for Lower Sacramento Road and Westgate Drive shall be constructed from the signalized intersections on Kettleman Lane to the south boundary of the parcel map. Street improvements along the frontages of Parcels 1, 12 and "A" shall extend to and include the installation of the westerly curb and gutter.
  - b) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template to accommodate northbound right turns.
  - c) The extension/installation of all public utilities necessary to serve the commercial development and/or required as a condition of development.

- d) Temporary storm drainage detention basin to serve the project.
- 8. Acquisition of street right-of-way, public utility easements and/or construction easements outside the limits of the map to allow the installation of required improvements on Kettleman Lane, Lower Sacramento Road and Westgate Drive.
- 9. Abandonment/removal of wells, septic systems and underground tanks in conformance with applicable City and County requirements and codes prior to approval of public improvement plans.

Payment of the following:

- a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
- b) Development Impact Mitigation Fees per the Public Works Fee and Service Charge Schedule at the time of payment and as provided by Resolution 2004-238 adopted by the City Council on November 3, 2004.
- c) Wastewater capacity fee at building permit issuance.
- d) Reimbursement fees per existing agreements:
  - I. Reimbursement Agreement RA-02-02. The reimbursement fee for 2004 is \$32,307.78. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment.
  - II. The Vintner's Square shopping center on the north side of Kettleman Lane is currently under construction. We anticipate that the developer of the Vintner's Square project will submit a request for reimbursement in conformance with LMC 16.40 Reimbursements for Construction covering public improvements in Kettleman Lane and Westgate Drive constructed with that development which benefit the Lodi Shopping Center project when the Vintner's Square improvements are complete. Upon submittal, the reimbursement agreement will be prepared by City staff and presented to the City Council for approval. Any reimbursement fees approved by the City Council that affect the Lodi Shopping Center site will have to be paid in conjunction with the development of the first parcel.
- e) Reimbursement to the City for the installation and/or design costs for the following improvements to be included in City's Lower Sacramento Road project:
  - I. Installation of 10-inch water main and storm drain lines, including appurtenant facilities, in Lower Sacramento Road in conformance with LMC §16.40 Reimbursements for Construction.
  - II. Water, wastewater and storm drain stubs to serve the shopping center project.
  - III. Any other costs associated with changes/additions necessary to accommodate the Lodi Shopping Center project, including, but not limited to, any utility alignment changes for public utilities to be

extended through the site and the proposed dual northbound left turn lanes and conduit crossings for the traffic signal improvements at the main shopping center driveway.

- f) The project shall contribute its fair share cost to the installation of a permanent traffic signal at Lower Sacramento Road and Harney Lane. Until the intersection improvements are made and traffic signals are installed, the project applicant shall contribute its fair share cost for the installation of a temporary traffic signal with left-turn pockets on all four approaches to the Lower Sacramento Road/Harney Lane intersection.

The above fees are subject to periodic adjustment as provided by the implementing ordinance/resolution. The fee charged will be that in effect at the time of collection indicated above.

10. Obtain the following permits:

- a) San Joaquin County well/septic abandonment permit.
- b) Caltrans Encroachment Permit for work in Caltrans right-of-way.

11. The City will participate in the cost of the following improvements in conformance with LMC §16.40 Reimbursements for Construction:

- a) Master plan storm drain lines.
- b) Master plan water mains.
- c) Master plan reclaimed water mains
- d) Industrial waste

Please note that construction of master plan wastewater facilities to serve the project site is not included in the City's Development Impact Mitigation Fee Program and is not subject to impact mitigation fee credits for sewer facilities or reimbursement by the City.

- H. Install fire hydrants at locations approved by the Fire Marshal.
- I. Shopping carts shall be stored inside the buildings or stored in a cart storage area adjacent to the entrance of the building.
- J. No outdoor storage or display of merchandise shall be permitted at the project unless a specific plan for such display is approved by SPARC. At no time shall outdoor storage or display be allowed within the parking area, drive aisle or required sidewalks of the center.
- K. Vending machines, video games, amusement games, children's rides, recycling machines, vendor carts or similar items shall be prohibited in the outside area of all storefronts. The storefront placement of public telephones, drinking fountains and ATM machines shall be permitted subject to the review and approval of the Community Development Director.
- L. All storage of cardboard bales and pallets shall be contained within the area designated at the rear of the Wal-Mart building for such use. No storage of cardboard or pallets may exceed the height of the masonry enclosure at any time.

- M. The loading area shown in front of the Wal-Mart building shall be stripped and posted with "NO PARKING – LOADING ONLY" signs to the satisfaction of the Community Development Director.
- N. A photometric exterior lighting plan and fixture specification shall be submitted for review and approval of the Community development Director prior to the issuance of any building permit. Said plans and specification shall address the following:
1. All project lighting shall be confined to the premises. No spillover beyond the property line is permitted.
  2. The equivalent of one (1) foot-candle of illumination shall be maintained throughout the parking area.
- O. Exterior lighting fixtures on the face of the buildings shall be consistent with the theme of the center. No wallpacks or other floodlights shall be permitted. All building mounted lighting shall have a 90-degree horizontal flat cut-off lens unless the fixture is for decorative purposes.
- P. All parking light fixtures shall be a maximum of 25 feet in height. All fixtures shall be consistent throughout the center.
- Q. All construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. No exterior construction activity is permitted on Sundays or legal holidays.
- R. Prior to the issuance of a building permit for the new Wal-Mart Supercenter, the applicant shall ensure one of the following with respect to the existing Wal-Mart building located at 2350 West Kettleman Lane ("Building"):
- a) The owner of the Building shall have entered into signed lease(s) with bona-fide tenant(s) for at least 50% of the Building square footage (not including the fenced, outdoor garden center). The signed lease(s) required hereunder shall include a lease(s) with a bona-fide retailer(s) or restaurant for a minimum of two-thirds of the Building frontage (not including the fenced, outdoor garden center); or
  - b) The owner of the Building shall have entered into a fully executed purchase agreement for the Building with a bona-fide retailer; or
  - c) The Applicant shall present to the City a cash escrow account, subject to the approval of the City Attorney, which account shall be for the purpose of securing applicant's obligation to demolish the Building not later than 90 days after the opening to the general public of the new Wal-Mart Supercenter (the "Opening Date"). The amount of the deposit shall be equal to the City estimated reasonable costs to demolish the Building (based on a licensed contractor estimate) plus \$100,000. The escrow account shall be paid to City in the event that Option (a), (b) or (c) is not satisfied within 90 days of the Opening Date. If Option (a), (b) or (c) is satisfied within 90 days after the Opening Date, the cash in the escrow account shall be refunded in full to the Applicant.

If the Applicant does not satisfy this condition under Option (a), (b) or (c) within 90 days after the Opening Date, the City shall use the funds to demolish the Building with any balance reverting to the City as compensation for its expense and inconvenience incurred to demolish the Building. The owner of the Building shall present evidence that any lender on the Building consents to the demolition in a form subject to the approval of the City Attorney. This condition shall be recorded against the property as a deed restriction, which runs with the land. Applicant and Wal-Mart agree to enter into any agreements that are necessary in order to implement this condition.

- S. No materials within the garden or seasonal sales area shall be stored higher than the screen provided.
- T. Wal-Mart shall operate and abide by the conditions of the State of California Alcoholic Beverage Control license Type 21, off sale-general.
- U. Wal-Mart shall insure that the sale of beer and wine does not cause any condition that will result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passerby, assaults, batteries, acts of vandalism, loitering, illegal parking, excessive or loud noise, traffic violations, lewd conduct, or police detention and arrests.
- V. This Use Permit is subject to periodic review to monitor potential problems associated to the sale of alcoholic beverages.
- W. Prior to the issuance of a Type 21 license by the State of California Alcoholic Beverage Control Department, the management of the Wal-Mart store shall complete the Licensee Education on Alcohol and Drugs (LEAD) as provided by the State Alcoholic Beverage Control Department. In the event that Wal-Mart has training that is equivalent to the LEAD program, such documentation shall be submitted to the Community Development Director for review and approval.
- X. The project shall incorporate all mitigation measures as specified in the adopted Final Environmental Impact Report EIR-03-01 for the project.
- Y. The submitted Use Permit, Parcel Map and associated plot plan are hereby approved subject to the conditions set forth in this resolution.
- Z. No variance from any City of Lodi adopted code; policy or specification is granted or implied by the approval of this Resolution.
- AA. The sliding gates that are shown in the rear of the Wal-Mart building shall have a knox box system at each gate for Fire Department access.
- BB. Buildings, which are fire sprinkled, shall have Fire Department connections within 50 feet of a fire hydrant, subject to the Fire Marshall's approval.
- CC. Fire lanes shall be identified per Lodi Municipal Code 10.40.100 and marked in locations specified by the Fire Marshall. All fire lanes shall be a minimum of 24-foot-wide.

- DD. The water supply for the project shall meet the requirements for fire hydrants and fire sprinkler demand and system approved by the Fire Marshall.
- EE. Developer shall pay for the linkage study that the City is required to do based on Program 11 of the recently adopted Housing Element of the General Plan. The developer shall receive a credit for the amount paid against the final fee as adopted by the City Council.
- FF. Wal-Mart shall provide proof of sale, to a non Wal-Mart related entity, of the existing Wal-Mart property located at 2350 W. Kettleman Lane prior to the issuance of the building permit for the new Wal-Mart Supercenter without condition on the right of purchaser to lease or sell the existing Wal-Mart building.
5. The City Council certifies that a copy of this Resolution, and Final Environmental Impact Report are kept on file with the City of Lodi Community Development Department, 221 West Pine Street, Lodi, CA 95240.

Dated: February 16, 2005

=====


I hereby certify that Resolution No. 2005-38 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 16, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, and Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – Mayor Beckman



SUSAN J. BLACKSTON  
City Clerk

2005-38



PACIFIC MUNICIPAL  
CONSULTANTS

April 10, 2006

Mr. Randy Hatch  
Community Development Director  
City of Lodi  
City Hall  
21 West Pine Street  
P.O. Box 3006  
Lodi, CA 95241

Re: Proposal to Prepare the Amendments to the Lodi Shopping Center EIR

Dear Mr. Hatch:

Pacific Municipal Consultants is pleased to submit this proposal to prepare the Amendments to the Lodi Shopping Center EIR. The following scope of work outlines our understanding of the assignment, and the expected content of the EIR Amendments, and provides an overview of PMC's involvement in the review and revision process through to EIR certification. This is followed by a schedule outlining the timeline for this process, and the estimated budget needed to complete the scope of work.

## SCOPE OF WORK

### Project Understanding

For purposes of this scope of work, it is assumed that the project description for the Lodi Shopping Center will be the same as described in the previously certified Lodi Shopping Center EIR.

### General Approach

It is understood that the certification of the original EIR has been rescinded. However, since only limited portions of the EIR will need to be revised and recirculated, it is understood that the EIR revisions will be contained in a supplemental document. It is the intent of City staff that the original EIR, as amended by the supplemental document, will be carried forward for certification. Because the original EIR is not currently a certified document, the supplemental document cannot be called "Supplemental EIR," "Subsequent EIR," or "EIR Addendum," since these terms have specific meaning under CEQA in that they all function to amend EIRs which have been certified. As such, PMC proposes to call the subject document an "EIR Amendments document" since this is not a CEQA term and yet accurately describes the function of the document.

[www.pacificmunicipal.com](http://www.pacificmunicipal.com)

**CHICO**  
140 Independence Circle  
Suite C  
Chico, CA 95973  
Phone (530) 894-3469  
Fax (530) 894-6459

**DAVIS**  
1590 Draw Avenue  
Suite 120  
Davis, CA 95616  
Phone (530) 750-7076  
Fax (530) 750-2811

**MONTEREY**  
585 Cannery Row  
Suite 304  
Monterey, CA 93940  
Phone (831) 644-9174  
Fax (831) 644-7696

**MT. SHASTA**  
508 Chestnut Street  
Suite A  
Mt. Shasta, CA 96067  
Phone (530) 926-4059  
Fax (530) 926-4279

**OAKLAND**  
1440 Broadway  
Suite 1008  
Oakland, CA 94612  
Phone (510) 272-4491  
Fax (510) 268-9207

**PHOENIX**  
1616 E. Indian School Road  
Suite 440  
Phoenix, AZ 85016  
Phone (602) 279-1360  
Fax (602) 279-1326

**RANCHO CORDOVA**  
10461 Old Placerville Road  
Suite 110  
Rancho Cordova, CA 95827  
Phone (916) 361-8384  
Fax (916) 361-1574

**SAN DIEGO**  
10951 Sorrento Valley Road  
Suite 1-A  
San Diego, CA 92121  
Phone (858) 453-3602  
Fax (858) 453-3628

The primary purpose of the EIR Amendments document will be to address those aspects of the original Lodi Shopping Center EIR that were found to be deficient by the San Joaquin County Superior Court in its decision issued on December 19, 2005. In particular, the EIR Amendments document is to revise the urban decay analysis in the EIR and to address the project's potential energy effects. This scope of work also includes revisions to the Project Alternatives section of the EIR, as well as a modified statement of Project Objectives, as requested by City staff.

In addition, the City of Lodi has indicated that it has made a significant change in policy with respect to protection of agricultural land since the original EIR was certified on February 3, 2005. It is anticipated that City Council will formally adopt a policy requiring new development projects to provide mitigation for conversion of prime agricultural land, specifically in the form of agricultural easements or in-lieu payments at a prescribed ratio. Since the previously certified EIR does not identify this as a mitigation measure, the City staff has directed that the EIR Amendments document include a revised discussion of agricultural impacts which identifies agricultural easements as a mitigation measure.

In short, the EIR Amendments document is to contain substantive discussions on the subjects of urban decay, energy resources, agricultural resources, and project alternatives, and will include a modified Statement of Project Objectives. The proposed content of each of these discussions is outlined below under "Task 2 - Prepare Administrative Draft EIR Amendments." Since the remainder of the previously certified EIR was not deemed deficient by the Superior Court, the EIR Amendments document will contain no other topical discussions apart from those identified above. However, for informational purposes, the EIR Amendments document will include the 'Summary of Impacts and Mitigations' and the 'Project Description' from the original EIR.

It is understood that the entire EIR will need to be recertified. However, since the remaining portions of the original EIR are still valid and not subject to change, there is no need to recirculate the original EIR for public and agency review. However, the Planning Commission and the City Council (on appeal) will need to have the original EIR, along with the EIR Amendments document, in order to recertify the entire EIR. For this purpose, it is recommended that the previous DEIR be revised to include the text amendments included in the previous Final EIR, and that the entire document be renamed consolidated Final EIR (Volumes I and II). In order to avoid confusion with respect to the revised sections, it is recommended that the passages of the previous EIR which are revised in the EIR Amendments document be overwritten with strikeouts, with a note accompanying each such passage indicating that the revised passage is found in the EIR Amendments document. For the convenience of the reviewers, it is proposed that the public review draft of the EIR Amendments document include a CD containing the original consolidated Final EIR (Volumes I and II) and the Draft EIR Amendments document.

#### **TASK 1 – PREPARE NOTICE OF PREPARATION**

As required under CEQA, a Notice of Preparation (NOP) will be prepared which notifies the public and agencies that the EIR Amendments document is being prepared, and which invites their input on issues of concern. The NOP will include a project description and the list of issues to be covered in the EIR Amendments document. It is assumed that City staff will distribute the NOP to the agencies and other interested parties.

## TASK 2 - PREPARE ADMINISTRATIVE DRAFT EIR AMENDMENTS DOCUMENT

The content of the EIR Amendments document and the work tasks for the individual topic areas, as currently anticipated, are described below. The format of the EIR Amendments document will be identical to the previously certified EIR and will use the same numbering system for individual sections of the document.

### INTRODUCTION

This brief introductory section will discuss the background of the EIR Amendments document, and will explain the rationale for limiting the scope of issues to be addressed in the document. The City's process for preparation and review of the EIR Amendments document will also be described.

### SUMMARY

This section will include a brief description of the project and a summary table that lists the potential impacts identified in both the original EIR and the EIR Amendments document (newly added or modified language would be distinguished in some manner), along with the corresponding mitigation measures and the level of significance after mitigation.

## II. PROJECT DESCRIPTION

It is expected that this chapter will be identical to the corresponding chapter in the original EIR, except that the Statement of Project Objectives will be modified.

## III. ENVIRONMENTAL SETTING, IMPACTS AND MITIGATION MEASURES

This chapter will include an introductory note indicating that only the revised portions of the EIR are included in this document. It will note that all other aspects of the original EIR are still deemed valid, and that the following sections are to be considered replacements for the corresponding sections the original EIR.

- A. Land Use – The EIR Amendments document would include only a revised version of "Impact A3. Potential for Blight Due to Socioeconomic Impacts." (The reader would be referred to the original FEIR for discussion of other land use issues.) The new discussion of urban blight will be based entirely on the economic impact report to be prepared by Bay Area Economics under direct contract to the City. The new economic report is intended to replace the previous economic report by ADE. Although the BAE report will comprise a full economic impact study, it will focus on the competitive effects of the Wal-Mart Supercenter upon existing businesses within the trade area. The study will also include a specific analysis of the effects of the Lodi Shopping Center on downtown businesses. Most importantly, this section will address the cumulative effects of several existing and planned Wal-Mart Supercenters in the area, an issue which was raised by the Superior Court. However, the economic report will not evaluate the potential urban decay resulting from the vacancy of the existing Wal-mart

applicant to retenant this space will be adequate to prevent the physical deterioration of this space. The economic report by BAE will be included as a technical appendix to the EIR Amendments document.

- B. **Agricultural Resources** – Much of the discussion in the original EIR section, particularly the 'Environmental Setting' and 'Regulatory Setting' discussions, is still valid. However, these discussions will be reproduced in the EIR Amendments document in order to provide a context for the revised discussion under "Impact B1. Agricultural Land Conversion." Although much of this impact and mitigation discussion is also still valid, it will be revised and updated to reflect current City policy direction concerning the use of conservation easements as mitigation for conversion of prime farmland. The new discussion will describe, in detail, a new City policy on agricultural mitigation (expected to be adopted within the next two months), including prescribed replacement ratios, designated areas for acquisition of easements, management of easements or in-lieu fees, and other aspects of implementation, as appropriate. The most significant modification introduced by the SEIR will be the identification of new mitigation measure requiring the acquisition of an agricultural easement at a prescribed ratio, or payment of in-lieu fees at a prescribed rate. However, it will be acknowledged that since this mitigation will not prevent the conversion of irreplaceable prime farmland, the level of impact remaining after mitigation will still be significant and unavoidable. As such, the requirement to adopt a Statement of Overriding Considerations for agricultural resources will remain.
- C. **Energy** – This represents a new section which was specifically directed by the Superior Court to be added to the EIR. This section will follow the format of the other EIR sections and will begin with an overview of CEQA requirements and guidance for the discussion of energy impacts. The focus of the discussion will be on whether the project results in "inefficient, wasteful, and unnecessary consumption of energy." As appropriate, the guidance contained in CEQA Guidelines' "Appendix F – Energy Conservation" will be followed in preparing the analysis of energy impacts. In particular, this will cover the energy usage of the project, the capacity of the existing energy generation and distribution systems to accommodate the energy needs of the project, and the specific elements of the project which are intended to conserve energy.

### III. CUMULATIVE IMPACTS

This chapter will be selectively revised to include revised discussions for the three topics of concern, namely land use (urban decay), agricultural resources, and energy. It will be noted that all other aspects of the cumulative analysis are not subject to change.

### IV. ALTERNATIVES TO THE PROPOSED PROJECT

The existing alternatives discussion will be revised to reflect the modifications to the project objectives, and to incorporate other changes as directed by City staff. It is assumed that up to two new alternatives will be added to this chapter, with the specific descriptions of the alternatives to be determined in consultation with City staff.

#### APPENDIX A

The Notice of Preparation (NOP) for the EIR Amendments document, the comments received on the NOP, will be included as Appendix A to the EIR Amendments document.

#### APPENDIX B

The Economic Impact Report by Bay Area Economics will be contained in this appendix.

#### PRINTING AND DELIVERY

Upon completion of the Administrative Draft EIR Amendments document, 10 copies of the document will be printed and delivered to the City staff for their review, along with an electronic copy of the text in MS Word. (Five copies will be printed for use by the applicant.)

#### TASK 3 - REVISE EIR AMENDMENTS DOCUMENT

Based on comments received from the City staff, the Administrative Draft EIR Amendments document will be revised. It is expected that submittal of electronic copies (via email) of the revised EIR Amendments document and economic study will be sufficient for this round of review.

#### TASK 4 - PREPARE DRAFT EIR AMENDMENTS DOCUMENT

Based on staff comments received on the Revised Administrative Draft EIR Amendments document, a preliminary Draft EIR Amendments document will be prepared which incorporates the changes requested. It is anticipated that only an electronic copy of the text will need to be submitted at this stage. Typically, this phase of the process consists of a series of quick review and revision cycles, conducted via email, until the City determines that the Draft EIR Amendments document is acceptable for public review. A total of 50 hard copies of the Draft EIR Amendments document will be produced and submitted to the City, along with one reproducible hard copy. Each hard copy of the document will include an electronic copy of the document on CD in PDF format, which will be inserted in a pocket part inside the back cover. (As noted, the CD will include the original FEIR [Volumes I and II] and the Draft EIR Amendments document.) This scope of work includes the forwarding to the State Clearinghouse of an additional 15 hard copies of the full Draft EIR Amendments document along with the Notice of Completion (NOC). It is assumed that the City will distribute the document to local agencies and other interested parties. The 45-day public and agency review period will commence once the documents are submitted to the State Clearinghouse and made available for public review.

#### TASK 5 - PREPARE FINAL EIR AMENDMENTS DOCUMENT

At the conclusion of the 45-day review period, the comment letters from the agencies and the public will be reviewed and discussed with City staff. The draft responses to comments will then be prepared, along with an addendum section containing any text revisions to the EIR Amendments document. Upon completion, an administrative Final EIR Amendments document will be submitted to the City in electronic form for their review. Based on the comments received from the staff, final revisions to the document will be made. The Final EIR Amendments document will

submitted to the City in electronic form for their review. Based on the comments received from the staff, final revisions to the document will be made. The Final EIR Amendments document will include the summary of impacts and mitigations from the Draft EIR Amendments document, the comment letters, responses to comments, and text amendments. A total of 65 hard copies of the Final EIR Amendments document will be submitted (each with a CD of the document inside the back cover), along with one reproducible copy. In addition, 20 hard copies of the consolidated original FEIR (i.e., original DEIR revised to incorporate text changes specified in the original FEIR) will be produced for use by the Planning Commission, City Council, and staff.

Since it is difficult to predict the volume of comments that will be submitted on the Draft EIR Amendments document or the degree of controversy that the project will generate, the level of effort required to prepare responses to the comments cannot be estimated with accuracy. For purposes of this scope of work, a budget allocation equivalent to approximately 60 hours professional time has been devoted to the preparation of the Final EIR Amendments document. If additional effort is required beyond this allocation, additional budget authorization may be required, depending on budget remaining at the time.

#### MITIGATION MONITORING AND REPORTING PROGRAM

The previously adopted Mitigation Monitoring and Reporting Program (MMRP) for the project will be modified to reflect changes to the mitigation measures.

#### CEQA FINDINGS

This scope of work includes preparation of draft CEQA findings, including a Statement of Overriding Considerations, for use by City staff.

#### MEETINGS

It is anticipated that up to two meetings with City staff on the EIR Amendments document will be required during the course of the environmental review process, but that the bulk of the ongoing coordination will occur by telephone or email.

#### PUBLIC HEARINGS

It is anticipated that attendance at two public hearings on the project and EIR may be required before Planning Commission, and the City Council will hold one hearing on appeal. Therefore, attendance at a total of three public hearings is included in this scope of work.

#### Schedule

The following schedule sets forth the estimated time requirements for each step in the preparation and review process for the EIR Amendments document. This represents an optimal time-line and may be optimistic with respect to review and revision cycles. For example, additional time may be needed if major revisions to the economic report are required, or if greater than expected efforts are required to respond to comments received from public agencies or the public during the 45-day review period.

<u>Tasks/Steps</u>	<u>Time Elapsed (Weeks)</u>	<u>Target Date</u>
Authorization to Proceed/Consultant Contracts Executed	2.0	4/24
BAE – Admin. Draft Economic Impact Study Completed	8.0	6/19
PMC – Review of Admin. Draft Economic Study Completed	1.0	6/26
BAE – Draft Economic Impact Study Completed	1.0	7/5
PMC – ADSEIR Completed/Printed/Submitted	2.0	7/17
City – Review of ADSEIR	4.0	8/14
PMC/BAE – Revisions to Economic Report and ADSEIR	3.0	9/5
City – Review of Revised ADSEIR	2.0	9/18
PMC/City – Final Revision and Review Cycles	2.0	10/2
PMC – Coordinate Printing and Distribution of DSEIR	1.0	10/6
Public and Agency Review Period for DSEIR	6.5	11/20
PMC – Prepare Responses to Comments/Admin. Final SEIR	3.0	12/8
City – Review of Administrative FSEIR	2.0	12/22
PMC/City – Final Revision and Review Cycles	1.0	12/29
PMC – Coordinate Printing and Distribution of FSEIR	1.0	1/5
Planning Commission Hearing <sup>2</sup> (min. 10 days from release of FSEIR)	2.0	1/17

<sup>1</sup> This completion date assumes that the City's detailed policy guidance on agricultural mitigation will be issued by mid-June.

<sup>2</sup> Planning Commission meets on the 2<sup>nd</sup> and 4<sup>th</sup> Wednesdays of each month.

## FEE ESTIMATE

It is estimated that the total budget to complete the proposed scope of work will be \$60,000. The table below provides a breakdown of this fee estimate by task.

This fee estimate is subject to the notes and assumptions listed below the table. The City will be billed monthly on a time-and-expenses basis. No additional work efforts, outside of this scope of work and/or budget estimate, would be undertaken without the express prior authorization of the City. In order to cover possible future contract amendments which may be necessitated by unforeseen circumstances, it is recommended that an additional 20 percent be held in reserve by the City as a contingency. This would bring the total recommended budget to \$72,000.

TASK	STAFF HOURS/BUDGET	
	Project Manager \$150	Totals
1. Project Startup/Prepare Notice of Preparation	45	
2. Prepare Admin. Draft SEIR	110	
3. Revise ADSEIR	45	
4. Prepare Draft SEIR	33	
5. Prepare Final SEIR/MMRP/CEQA Findings	90	
Meetings and Hearings	40	
Total Hours	363	
Rate	\$150	
Total Labor Cost		\$54,450
Document Printing/Production of CDs		5,000
Misc. Direct Costs (Travel, delivery, etc.)		550
<b>Total Fee Estimate</b>		<b>\$60,000</b>
Contingency (20%)		12,000
<b>Total Recommended Budget</b>		<b>\$72,000</b>

## BUDGET NOTES AND ASSUMPTIONS

1. Two iterations only of the Administrative Draft EIR Amendments document are contemplated.
2. This proposal includes the evaluation of up to two additional project alternatives, to be identified in consultation with City staff.

3. A total of 60 hours has been budgeted for preparation of the Final EIR Amendments document. If substantial additional efforts are required, such additional efforts could require a contract amendment depending on the unspent budget remaining at the time.
4. Attendance at two meetings with City staff and three public hearings is included.
5. This proposal includes preparation of the draft Notice of Preparation, Notice of Completion, and draft CEQA findings for use by City staff. This proposal does not include preparation, handling or distribution of any other required notices such as notice of scoping meeting, public hearing notices, or Notice of Determination. It is assumed that the City staff will take full responsibility for preparation and timely distribution, posting, and publication of all required notices.
6. This proposal includes delivery of completed documents and CDs to the City, the State Clearinghouse, and the applicant. This proposal does not include distribution of documents to any other agencies, entities or individuals; nor does it include compilation of distribution lists, mailing addresses, or lists of surrounding property owners. It is assumed that the City staff will take full responsibility for all of these tasks.
7. Any additional efforts which may be required in the preparation of the EIR Amendments document, beyond those specifically included in this scope of work, may require a budget adjustment.
8. This scope of work and budget are predicated on the assumption that the preparation and processing of the EIR will proceed expeditiously without prolonged periods of inactivity which could create inefficiencies due to stopping and restarting work.

In closing, we are looking forward to working with you on this project.

Sincerely,

PACIFIC MUNICIPAL CONSULTANTS

A handwritten signature in black ink, appearing to read 'Tad Stearn', with a long horizontal line extending to the right.

Tad Stearn  
Principal

c: Bert Verrips, Project Manager  
PMC Contracts



February 3, 2006

Mr. Randy Hatch  
Community Development Director  
City of Lodi  
City Hall  
21 West Pine Street  
P.O. Box 3006  
Lodi, CA 95241

Dear Mr. Hatch:

We are pleased to submit the attached scope for an Economic Impacts Analysis for the Lodi Shopping Center proposed for the southwest corner of Lower Sacramento and West Kettleman. Attached are our scope, qualifications for key personnel, and relevant projects.

If you have any other questions regarding our proposed scope of services or any other portion of this proposal please do not hesitate to call me at 510.547.9380.

Best regards,

A handwritten signature in black ink that reads "Raymond Kennedy". The signature is written in a cursive, flowing style.

Raymond Kennedy  
Senior Associate

Bay Area Economics

Headquarters 510.547.9380  
1285 66th Street fax 510.547.9388  
Emeryville, CA 94608 bae1@bae1.com  
bayareaeconomics.com

## **Introduction**

The City of Lodi has received an application for the Lodi Shopping Center proposed for the southwest corner of Lower Sacramento and West Kettleman. This center will be anchored by a Wal-Mart Supercenter, with various other ancillary retail and commercial uses. Recent court decisions with respect to large retail projects have indicated that a complete EIR should include an economic impact analysis to assess potential issues of urban decay and physical deterioration due to possible closure of competing stores and subsequent vacancies and decline of their respective shopping centers or downtown. In Lodi, the EIR was completed, but the Superior Court found that the urban decay analysis portion of the EIR was deficient, so a new analysis must be undertaken. Bay Area Economics (BAE) is well-qualified for this work, with experience in these kinds of economic impact studies as well as a large body of retail analysis. Following is a Scope of Services, an overview of BAE, descriptions of key staff to be assigned to this project, and relevant past experience.

## **Scope of Services**

The scope will be completed in the context of the following retail uses for the center as proposed at approximately 350,000 square feet, based on current knowledge of potential tenant mix. BAE will contact the project applicant to obtain the latest available information regarding prospective tenants aside from the known Wal-Mart Supercenter.

1. *Big box general merchandise discount retailer with groceries.* It is assumed that a Wal-Mart Supercenter will be the anchor of the proposed project, occupying well over half the built space.
2. *Pharmacy.* The developers are attempting to attract a drug store such as Rite-Aid or Walgreen's to the project.
3. *Restaurants.* Several of the spaces in the site plan are configured as either fast food or sit-down restaurants.
4. *Other retail and services.* Additional tenants or uses will be noted as information becomes available. Those spaces that cannot be placed in one of the categories above will be considered in a general "other retail" category. The retail analysis will be completed in the context of possibly finding retail categories that are not currently well-represented in Lodi. It is also likely that some of the space will be occupied by personal services, business and professional services, and financial institutions.

### **Task 1: Start-up Meeting**

This project will commence with a meeting with City staff and other parties to discuss the project, including goals and objectives, schedule, expectations, and constraints, opportunities, and limitations of the study. Background information, including but not limited to the project application, site plans, and taxable sales data, and previous studies will also be discussed and made available to BAE if available at time of startup.

### **Task 2: Identify Key Retail Nodes in Lodi and Surrounding Communities**

With assistance from City staff and previous studies, BAE will identify other major retail nodes in the area, focusing primarily on the specific uses listed above, including locating all nearby existing, under construction, and planned Wal-Mart Supercenters. As part of this assessment BAE will also attempt to get reliable information on the square footage of the major competing supermarket outlets; this information should be available from City records, especially for recently built stores. Other potential sources include visual estimates and aerial photos. Additional information will be obtained as available from retail real estate brokers and property managers, and store management. Of particular importance are the existing supermarkets; these are the stores most likely to be impacted by the Wal-Mart expansion and relocation.

This analysis will include an area tour to visit the major competing retail nodes, including downtown Lodi, and to assess “on the ground” how well these nodes are faring, by observing the level of customer traffic, the general level of retail vacancy and the vacancy level in specific centers (especially noting vacancies of large/anchor spaces). Any existing “urban/suburban decay” in retail centers will also be noted. This is key to the findings, since existing conditions should not be attributed to the proposed project. As part of this subtask, BAE will determine whether any additional retail centers are planned for Lodi or surrounding communities, especially Stockton. Any such projects will be considered in an analysis of potential cumulative impacts.

### **Task 3: Retail Sales Trends**

BAE will analyze data regarding overall retail sales trends in these areas, with an emphasis on consideration of the categories of the prototype uses listed above. The primary data source will be published taxable sales data from the State Board of Equalization and the City of Lodi. Especially useful will be any data the City has available on subareas such as downtown. BAE will also look at data from the California Census of Retail Trade, which provides data from 2002. This source is useful in providing total sales data rather than just taxable sales; this is critical to estimating impacts in the supermarket sector, where most sales are not taxable.

### **Task 4: Define Trade Area for Proposed Project**

The Trade Area boundaries will be delineated in large part by the location of nearby Wal-Mart Supercenters, either existing, planned or under construction. The Trade Area for the project will be determined primarily by the location of nearby competing Supercenters. Additionally, preliminary demographic analysis (see next task) will help in defining Trade Area boundaries.

### **Task 5: Demographic and Economic Overview of Lodi and the Trade Area**

Retail sales potential is dictated in large part by the purchasing power of an area’s residents. For this task, BAE will look at basic demographic characteristics for Lodi and the Trade Area, including total population, total households, household composition, age distribution, and resident income, since all these characteristics define the spending patterns for a geography. The analysis will look at historic data and projections, and compare to a larger area, such as California. Data sources will include the decennial U.S. Census, the State Department of

Finance, the City of Lodi, Claritas (a private vendor of population estimates and projections), and the San Joaquin County Council of Governments.

**Task 6: Estimate Sales Generated by Lodi and Trade Area**

For this subtask, BAE will estimate sales generated by consumers in Lodi and the Trade Area, for a range of store categories, with particular focus on the likely store types for the proposed center. This estimate will be based on population distribution and density and distance of other competing outlets from Lodi and the project site. Potential sales for Lodi will be estimated based on benchmarks from other geographies such as San Joaquin County, the State of California, and communities with a demographic profile similar to Lodi. As a final step in this task, the increase in annual demand will be converted into estimated supportable square footage for major retail categories of stores likely to locate in a retail center of this type, using industry benchmarks for average sales per square foot.

**Task 7: Leakage Analysis for Lodi and the Trade Area**

Based on the results of the above tasks, BAE will estimate the extent to which Lodi is currently capturing sales from or losing sales to surrounding locales. While the emphasis will be on specific retail types known for the proposed project, leakage of sales in other categories may indicate types of retailers that the project could attract for spaces currently not targeted for a particular niche.

**Task 8: Assess Performance of Competing Retail Nodes**

While a leakage analysis is critical to understanding the potential for additional retail expenditures in a locale, a complete impacts assessment must take the additional step of evaluating the performance of existing competitive outlets regardless of the leakage analysis. For instance, a city might not have any leakage of sales in supermarkets, but may have an oversupply of supermarkets as indicated by poor performance at existing outlets. Conversely, there might not be any leakage but existing outlets could be performing well above industry norms, indicating that an additional supermarket could be absorbed without putting a competitor out of business.

This analysis will focus on the key competitive categories of large general merchandise outlets and supermarkets and their centers. Synthesizing information gathered on sales performance and store size, BAE will develop an estimate of average sales per square foot for the existing outlets for large general merchandise outlets and supermarkets. These averages can then be compared to industry benchmarks, such as average sales for all Wal-Mart stores or their competitors, data derived from industry surveys, etc.

When possible, this analysis can be refined by looking at individual competitors, since overall strong per store or per square foot sales might mask poor performance at one outlet. Pursuant to this goal, if made available BAE will review confidential taxable sales data from the City for any competitors in the City and use these data to refine the analysis. BAE has used confidential State Board of Equalization sales tax data provided by local jurisdictions in previous studies, and is well-versed in the rules regarding confidentiality and disclosure of the data. As a result

of these rules, sales estimates regarding individual existing stores may be excluded from the published EIR but will be made available to City staff as permitted. If the confidential data is not made available, BAE will use the most recent published taxable sales data available, and attempt to gather data on individual competitors through self-reporting, analysis of each chain's average sales, field observation, or other methods.

When large retail projects like this are built in smaller cities, there is often concern from various parties regarding the effect on downtown, its retailers, and its overall viability. As part of this task, BAE will also assess the performance of downtown Lodi. BAE will inventory the existing mix of retailers in downtown Lodi, and consider downtown's market position vis-à-vis the proposed center.

#### **Task 9: Estimated Potential Sales in New Project and Impacts on Existing Retailers**

Based on typical sales performance for the major tenant types or for another standard if that seems appropriate due to locational advantages or other factors, and for a more generic standard for shopping centers for the remaining uses, BAE will estimate sales captured by the proposed project. This will then be compared to potential sales growth and leakage in Lodi and the Trade Area as determined above to factor out sales that will not be captured from existing outlets. This will be done for two points in time, project opening (likely defined as when the Wal-Mart opens) and project build out a few years later. These dates will be selected in consultation with the City and the developer.

The remaining sales will be assumed to be taken from existing outlets. Once the proposed project's impacts are taken into consideration, performance will be evaluated relative to current conditions (as shown by Task 8 above) and again to industry standards, to see how the net loss of sales will affect the existing outlets. To the extent possible without breaching confidentiality rules for taxable sales data, BAE will note particular competitors most likely to be adversely impacted by the proposed project. If the analysis indicates that particular stores are at risk of closure, these stores will be noted. This analysis will look at all the major retail concentrations in Lodi, including downtown.

As the final part of this task, BAE will consider impacts related to the physical context for the major competitors. In other words, BAE will see how the competitors are integrated into a surrounding retail context (e.g., major anchor in a community-serving center or large retailer in a shopping district) and assess likely secondary business impacts due to a decline in business or closure of a major anchor.

#### **Task 10: Determination of Urban Decay and Physical Deterioration**

Two conditions are necessary, but not sufficient in themselves, for a large new retail development of this type to lead to urban/suburban decay and physical deterioration. First, the introduction of new competitors must lead to the closure and vacancies of existing retail spaces. Potential closures will be indicated by the analysis in Task 9. Second, the real estate market conditions must be such that the vacated space is not re-leased in a timely manner. Based on

the above tasks, findings will be made about the likelihood that other retail nodes might close or suffer losses of key retail tenants as a result of the proposed center. Impacts might include secondary business closures and moves resulting from the loss of the anchors at other neighborhood and regional centers. This task will include an overview of existing retail real estate conditions in Lodi, including current vacancies and potential for re-tenanting of any store space vacated as a result of the proposed center. BAE will assess the likelihood that overall retail demand in the area will lead to absorption of vacated spaces in the event existing retailers close their stores due to negative impacts from the opening of the proposed center. This assessment will rely on broker interviews and field surveys to estimate current vacancy and absorption trends for retail in Lodi. The current physical condition of the competing retail centers will also be taken into consideration, since any center already exhibiting high vacancies, deferred maintenance, or other signs of decline would be more likely to fall into a condition of urban or suburban decay.

The end result of this analysis will be an assessment, by retail node or center, of the likelihood of resulting urban decay and physical deterioration resulting from long-term vacancies, deferred maintenance, secondary business closures, and the inability to re-tenant existing stores.

**Task 11: Preparation of Written Report**

A written report for the project will be prepared, which details the assumptions and conclusion of the analysis. The report will meet the requirements of the City of Lodi and CEQA Guidelines and will be initially submitted (one copy, camera ready) as an Administrative Draft. The report will also be provided electronically.

**Task 12: Respond to Comments on Administrative Draft**

BAE will respond to comments provided by the City of Lodi, the EIR prime consultant, and other parties on the Administrative Draft, and will be available to take part in a telephone conferences to discuss comments on this document. Additional study and site visits are excluded from this task, and the revisions will be limited to two cycles, with additional revisions completed on a time and materials basis. The output of this task will be a Public Review Draft.

**Task 13: Respond to Comments on Public Review Draft Economic Impact Analysis**

BAE will be available by phone conference with City staff and the EIR prime consultant to discuss public comments, and will prepare responses to those comments as needed as part of the preparation of the Final EIR.

**Task 14: Attend Three Planning Commission and/or City Council Public Hearings**

As part of this scope, BAE will be available to attend a total of three public hearings regarding its Report and the EIR. Additional meetings will be billed on a time and materials basis as discussed below.

### **Schedule and Budget**

BAE will complete an Administrative Draft by April 15, 2006, assuming verbal approval by February 15, 2006. A Final Draft (for public review) will be completed within 10 business days of receipt of comments on the Administrative Draft. At that point, the schedule will be dictated by the overall EIR process and CEQA rules.

BAE proposes to provide the above-described services on a time and materials basis for a total of \$46,075, including expenses, as shown in the attached budget. BAE will bill on a monthly basis based on percentage of project completed, with bills due within 30 days of receipt. Additional meetings or other tasks will be billed at BAE's hourly rates plus expenses, as follows:

Managing Principal	\$225/hr
Principal	\$210/hr
Vice President	\$190/hr
Senior Associate	\$175/hr
Associate	\$105/hr
Analyst	\$80/hr

These rates are for work completed in 2006; BAE reserves the right to adjust these rates if the project continues beyond the end of calendar year 2006.

BAE carries General Liability Insurance in the amount of \$2 million per occurrence with an aggregate limit of \$4 million, including coverage for automobile liability and completed products. BAE also carries Workman's Compensation as required by law. We are able to provide the City with a Certificate of Insurance naming it as an additional insured on our policy. BAE does not carry Errors and Omissions or Professional Liability Insurance due to the nature of our work, which involves analysis and reporting on economic, planning, and development issues. Most of what we do involves estimates, ranges of numbers, and findings and recommendations that are informational to decision-makers. The results of our work do not create physical structures or other products that bear liability to their users. Although Professional Liability coverage is available for professional services that are similar to ours, we have found that the policies are not written to match exactly with our services, and that the costs are not commensurate with any risk borne by us or our clients.

## Budget

Task	BAE Hours			Total Budget
	Janet Smith-Heimer Mng. Principal \$225	Raymond Kennedy Sr. Assoc. \$175	Analyst \$80	
1 Start-up Meeting	-	4	4	\$1,020
2 Identify Key Retail Nodes	-	20	24	5,420
3 Retail Sales Trends	-	6	12	2,010
4 Define Trade Area(s) for Proposed Project	-	6	2	1,210
5 Demographic and Economic Overview of Lodi and the Trade Area	-	4	8	1,340
6 Estimate Sales Generated by Lodi and Trade Area	-	8	4	1,720
7 Leakage Analysis for Lodi and the Trade Area	-	16	-	2,800
8 Assess Performance of Competing Retail Nodes	-	8	16	2,680
9 Estimated Potential Sales in New Project and Impacts on Existing Retailers	-	16	-	2,800
10 Determination of Urban Decay and Physical Deterioration	1	8	6	2,105
11 Preparation of Written Report	2	40	6	7,930
12 Respond to Comments on Administrative Draft	1	20	4	4,045
13 Respond to Comments on Public Review Draft	1	24	4	4,745
14 Attend Two Meetings: Planning Commission and/or City Council	-	30	-	5,250
<b>LABOR</b>	<b>5</b>	<b>210</b>	<b>90</b>	<b>\$45,075</b>
<b>EXPENSES (includes data purchase and mileage)</b>				<b>\$1,000</b>
<b>TOTAL BAE BUDGET</b>				<b>\$46,075</b>

## About BAE

Since 1986, BAE has focused on **The Economics of Place™**, providing comprehensive real estate and urban development services to public, private, non-profit, and institutional clients throughout the U.S. Our projects reflect our commitment to excellence, stewardship of communities and resources, and dedication to the future of our places.

BAE's experience ranges from statewide policy studies to regional initiatives to local development projects. Based in Berkeley, California, with additional offices in San Francisco, the Sacramento region, and Washington D.C., we translate the best national practices into local solutions to enhance communities and neighborhoods.

Our expertise includes:

- Development Feasibility
- Redevelopment & Revitalization
- Affordable Housing
- Economic Development
- Public/Private Transactions
- Community Facilities
- Public Finance
- Economic Impacts
- Place and Site Marketing
- Litigation Support

We have also developed unique expertise in non-place aspects of urban development including sustainability, technology transfer, targeted industry studies, child care, and social services.

Our key asset is our highly-skilled core team of staff members who have worked together for many years. Collectively, we bring our training in real estate development, city planning, geography, economic development, marketing, and public policy to every engagement. Many BAE staff members are expert in community involvement and strategic planning, while others excel in technical analysis and the application of GIS to urban problems. We pioneered the use of survey research to target urban housing products, and we have provided real estate advisory services to some of the largest mission-driven revitalization efforts in the U.S.

The outstanding quality of our work has been recognized by the American Planning Association (APA) and the National Association of Installation Developers (NAID) through numerous awards for excellence. The *San Francisco Business Times* has recognized BAE as one of the 100 Largest Women-Owned Bay Area Businesses each year since 2000.

BAE's legal name is BAE Urban Economics, Inc. This project will be undertaken by the Emeryville office, located at 1285 66<sup>th</sup> Street, Emeryville, CA 94608. Our phone number is (510) 547-9380.

## **BAE Project Team**

This project will be managed by Janet Smith-Heimer, Managing Principal, with day-to-day project management by Raymond Kennedy, Senior Associate, who will be assisted by additional research staff as needed.

### **Janet Smith-Heimer, M.B.A., Managing Principal**

Janet Smith-Heimer manages the Berkeley headquarters office and directs most of its projects. She has specialized in real estate economics and development since 1978. Through her experience, she has gained a unique understanding of urban policy, real estate analysis, and development, and urban policy. She is a nationally recognized expert in affordable housing, economic development, and public/private partnerships.

Since founding BAE in 1986, Ms. Smith-Heimer has managed assignments for some of the largest public/private projects in the U.S. Her work includes transaction structuring and feasibility support for numerous urban projects in San Francisco including Piers 27-31, a mixed-use waterfront recreation and urban entertainment complex; the Old Mint, a historic reuse project; Hotel Vitale, a boutique hotel on publicly-owned land; and the Presidio of San Francisco, one of the world's largest sustainable development project. She has also provided strategic planning, market and financial analysis, and negotiation support to military base reuse projects such as the conversion of Mare Island Naval Shipyard to a mixed-use community.

Ms. Smith-Heimer has directed many economic development strategic planning processes for cities as diverse as a suburban edge (Tracy, CA) to a thriving high income community with a strong new downtown (Walnut Creek, CA). She has also directed numerous downtown and business district revitalization strategies, including work in Oakland, Phoenix, Seattle, San Jose, Chico, Sacramento, and Stockton. Many of these assignments included resident surveys, detailed leakage analyses, retail store trends research, small business technical assistance, and detailed action plans for implementation.

One of Ms. Smith-Heimer's areas of expertise is in housing, including affordable and market-rate project types. She has managed feasibility studies for downtown housing, transit-oriented housing, luxury subdivisions, condominium conversions, and employee housing programs. She has developed in-depth knowledge of elderly housing products, particularly through her work with Transamerica Senior Living, Inc., and has worked on the development of affordable housing, including for-sale units for low-income households, SROs, HOPE VI, and rental projects. She wrote *The California Affordable Housing Cost Study* (1993) as well as numerous policy analyses of affordable and special needs housing programs.

Ms. Smith-Heimer serves as a lead instructor for the ULI Real Estate School, and speaks regularly at U.C. Berkeley. Her publications include "Downtown Housing Market Analysis" (*Market Analysis*, Urban Land Institute, 2001), "From the Military to the Marketplace: An Update on Northern California Base Conversions" (*Urban Land*, 1996), and *Recommended Redevelopment Practices* (California Debt Advisory Commission, 1995).

Ms. Smith-Heimer received an M.B.A. from Golden Gate University and a Bachelor of Urban Planning from the University of Cincinnati. She is a member of ULI, the American Planning Association, and the Congress for New Urbanism. She serves on the board of The Development Fund, a national economic development organization, and as Board Chair of Sustainable Agricultural Education (SAGE), a non-profit devoted to the urban-rural edge.

**Raymond Kennedy, M.A., Senior Associate**

Mr. Kennedy has completed retail analyses and economic impact studies for many "big box" merchandisers, including proposed projects in Tracy, Antioch, Eureka, Morgan Hill, and Windsor CA and Bozeman, MT. He is currently working on similar impact studies for "big box" retail projects in Porterville, Redding, and Petaluma. This work includes supervising research staff and undertaking the analysis of retail leakage, supportable square footage, and potential economic decay and physical deterioration. Mr. Kennedy has specialized in demographic research, retail market studies, financial analysis, and survey research since joining BAE in 1988. His quantitative work is characterized by a combination of innovative data analysis and sophisticated computer applications. He completed detailed cash flow analyses for military base conversion projects including the Presidio of San Francisco, Mare Island Naval Shipyard, and NAS Alameda, as well as for housing and mixed-use projects in Oakland, San Jose, and California's Central Valley. He has also supported market feasibility studies of live/work units and affordable housing projects throughout the U.S., and analyzed the benefits of redevelopment in San Jose. Mr. Kennedy received a B.A. in Anthropology and an M.A. in Geography from the University of Cincinnati. He also completed specialized training in real estate financial analysis at the University of California, Berkeley.

## **Relevant Project Experience**

*These include projects completed by BAE related to big-box and downtown retail development.*

### **Impacts of Proposed New WINCO and Wal-Mart Expansion**

*City of Tracy, CA*

As part of the EIR process for these two proposed projects, BAE is currently analyzing the impacts of a new WINCO and proposed Wal-Mart grocery component on other supermarkets and their shopping centers by analyzing potential supportable grocery sales within the trade area. The final reports for each EIR will include conclusions regarding potential urban decay and physical deterioration related to the opening of these new and expanded outlets.

### **Impacts of Proposed Bozeman MT Wal-Mart Expansion**

*Wal-Mart Corporation/City of Bozeman*

BAE analyzed the near-term impacts of a proposed Wal-Mart grocery component on other supermarkets by analyzing potential supportable grocery sales within the trade area. Concurrently, the City of Bozeman was considering a moratorium on big box development projects in order to preserve its small town ambiance, perceived to be a major attraction for high technology companies. To address this concern, BAE assessed longer-term impacts of Bozeman's changing retail patterns on high technology firms' interest in the area by interviewing firms regarding their location criteria and concerns about the area's competitive advantages.

### **Eureka Wal-Mart Economic Impacts Study**

*City of Eureka*

Bay Area Economics evaluated the economic impacts of proposed new "big-box" retail outlets in Eureka (including a proposed Wal-Mart), including the effects on existing retailers in Eureka, impacts on jobs and employment, the potential for increased shopping opportunities for area residents, and fiscal impacts of the proposed project on the City's General Fund.

### **WinCo Economic Impacts Analysis**

*City of Antioch, CA*

Bay Area Economics assessed a variety of potential impacts resulting from a proposed WinCo project in Antioch. The analysis included a profile of the retail grocery industry and local retail sales trends, and evaluated impacts on the City's fiscal conditions, the availability of grocery items at a variety of outlets, and local employment, including whether local housing is affordable for the proposed project's workers.

### **Economic Impacts Assessment of New Retail Development**

*City of Antioch*

In response to a developer's proposal to build a 250,000 square foot retail center with a general merchandise retailer, food store and/or a home improvement store as potential anchors, the City of Antioch retained BAE to document existing retail trends in the City and the trade area to be served by the proposed center, and to assess the impact this proposed development would have

on the City's existing retail outlets. The assignment presented demographic and economic trends, trade area retail conditions and trends, and a leakage analysis. It also described overall trends within the retail industry; profiled several major retailers, including Wal-Mart, Target, and Home Depot; and identified strategies small independent retailers typically employ to compete effectively with "big box" retailers like Wal-Mart. The study culminated in an impacts assessment estimating the potential loss in sales that existing stores may experience as a result of new competition, as well as estimating net changes in employment and impacts to the General Fund.

### **Impact Analysis for Proposed New Shopping Center**

#### *City of Morgan Hill, CA*

BAE assessed retail market conditions in Morgan Hill as part of the EIR process for this project which as proposed will include a Target, a movie theater complex, and other retail uses. BAE analyzed retail sales leakage and the potential for additional capture of sales in Morgan Hill. The report assessed the potential impacts on existing retail nodes in Morgan Hill, and concluded with an analysis of the potential for urban decay and physical deterioration due to the opening of this project. The Final EIR was approved by the City Council in November 2006.

### **Retail Impacts Analysis**

#### *Town of Windsor*

As an outgrowth of BAE's work for the Town of Windsor during its first General Plan process, this assignment examined the impacts on local merchants of a proposed 360,000 square foot regional shopping center anchored by a Wal-Mart store. Work included in-depth analysis of store-by-store retail sales and the mix of goods currently sold in the Windsor trade area.

### **Larkspur Downtown Specific Plan**

#### *City of Larkspur, CA*

As part of the Downtown Larkspur Specific Plan, BAE conducted a full market study for retail, residential, and office uses. Work included detailed analysis of store-specific taxable sales and interaction with a Task Force. This project, completed in association with an urban design firm, received the 1992 Comprehensive Planning: Small Jurisdiction Award from the Northern California Section of the American Planning Association.

### **Chico Downtown Market Study and Revitalization Strategy**

#### *City of Chico, CA*

Chico, a university town, had experienced substantial sales growth in suburban mall and "big box" development, leading to concerns about downtown economic vitality. This project assessed retail sales volumes and store sales performance, identified special niches, and formulated a revitalization strategy for downtown Chico. The study also analyzed the perceived predominance of adult-oriented entertainment venues and bars, and their negative impacts on the downtown retailing environment.

### **Downtown Retail Tenant Recruitment**

#### *City of Davis, CA*

The City of Davis retained BAE to identify target niches and to initiate a downtown recruitment strategy to strengthen downtown's position as the primary retail center for the community and to create a downtown tenant mix of unique independent retailers. BAE analyzed local demographics, developed a list of potential new downtown retailers, contacted a sample of this list, and marketed downtown to prospective businesses.

### **Downtown Revitalization Market Study**

#### *City of Benicia, CA*

For this historic community on the San Francisco Bay, BAE worked with the Economic Development Committee to analyze the market potential for various land uses. The area has a strong artist community, as well as numerous specialty retail shops and a one-mile scenic main street terminating at a newly renovated historic depot. Local merchants were focused primarily on strengthening their customer base, and the City was interested in exploring support for an artists' co-op gallery and additional lodging facilities. BAE analyzed retail sales leakage, conducted a telephone resident survey to assess local shopping patterns and opportunities, identified additional stores that could be attracted downtown, interviewed artists and profiled case studies of successful arts co-operative programs, and recommended strategies to ensure that future mixed use development maintained the view corridors and pedestrian orientation.

### **Lemoore Downtown Specific Plan**

#### *City of Lemoore, CA*

In association with an urban designer, BAE conducted a detailed market analysis and revitalization strategy as part of the Downtown Specific Plan for this Central Valley community. Our work included estimates of retail sales capturable from a nearby military installation, and re-positioning and promotional strategies. We also identified specific retail stores to target for attraction. This project received the 1994 national *Planning Implementation: Small Jurisdiction Award* from the American Planning Association.

### **Santa Rosa Core Area Enhancement Strategy**

#### *City of Santa Rosa*

For this study, BAE completed an inventory of existing uses in Santa Rosa's downtown, extensively utilizing GIS to map the distribution of these uses. BAE also conducted interviews with key stakeholders including retailers, property owners, and city officials, and recommended strategies to enhance the Core Area. The strategies include ways to strength the land use mix, creating a coordinated marketing effort, developing an urban design plan, and creating a "flagship goal/vision" for the Core Area.

RESOLUTION NO. 2006-81

A RESOLUTION OF THE LODI CITY COUNCIL  
RESCINDING CERTAIN PLANNING COMMISSION  
AND CITY COUNCIL RESOLUTIONS RELATING TO  
THE LODI SHOPPING CENTER APPROVALS

=====

WHEREAS, the proposed Lodi Shopping Center is located at the southwest corner of Kettleman Lane and Lower Sacramento Road and is anchored by a Super Wal-Mart and will contain other retail tenants; and

WHEREAS, the Planning Commission and City Council evaluated and certified an Environmental Impact Report (EIR) and approved a Use Permit and Tentative Map for the Lodi Shopping Center; and

WHEREAS, the City of Lodi's certification of the EIR was challenged in Superior Court and on December 19, 2005, the Court found the EIR to be deficient; and

WHEREAS, on February 10, 2006, the Court ordered the City of Lodi to rescind approval of the following Planning Commission and City Council resolutions approving the project:

- a. Planning Commission Resolution 04-64 certifying the EIR 03-01 adopted on December 8, 2004;
- b. Planning Commission Resolution 04-65 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on December 8, 2004;
- c. City Council Resolution 2005-26 certifying the EIR 03-01 adopted on February 3, 2005; and
- d. City Council Resolution 2005-38 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on February 16, 2005.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby rescinds the above-referenced Resolutions pursuant to the Superior Court Order of February 10, 2006, relating to the Lodi Shopping Center.

Dated: May 3, 2006

=====

I hereby certify that Resolution No. 2006-81 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 3, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, and  
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – Beckman

  
SUSAN J. BLACKSTON  
City Clerk

RESOLUTION NO. 2006-82

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING THE CITY MANAGER TO EXECUTE  
AGREEMENTS TO PREPARE ENVIRONMENTAL IMPACT  
REPORT AMENDMENTS FOR THE LODI SHOPPING CENTER

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute two Agreements to prepare Environmental Impact Report amendments for the Lodi Shopping Center as follows:

- 1) Pacific Municipal Consultants in an amount not to exceed \$72,000
- 2) Bay Area Economics in an amount not to exceed \$46,075

BE IT FURTHER RESOLVED that the above-referenced costs will be paid by the Developer, Browman Development Company.

Dated: May 3, 2006

=====

I hereby certify that Resolution No. 2006-82 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 3, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, and  
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – Beckman



SUSAN J. BLACKSTON  
City Clerk